PRIZE ESSAYS

CONTRIBUTED TO

THE MEDICO-LEGAL SOCIETY.

PRESS OF
THE LAW AND TRADE PRINTING COMPANY,
NEW YORK.

1890.

TABLE OF CONTENTS.

INTRODUCTION.

It has been the custom for some few years for the Executive Committee of the Medico-Legal Society to hold monthly meetings at the residence of its members, and to discuss around the table of the host of the evening, the questions of finance, business, science, and indeed all the business and transactions of the body, leaving the general meetings of the body free for the consideration of the scientific questions which arise upon the discussion of the papers read or otherwise.

At such a session at the residence of Mr. Simon Stern of the New York Bar, in April, 1877, a suggestion was made by Dr. Ferd. C. Valentine that the Society offer a reward for Prize Essays which met with favor, and a paper was drawn up on the spot, by which the gentlemen present subscribed a sum, limited to $10.00 each, to start a fund for this purpose, so as to offer a 1st and 2d prize. This paper was signed by Messrs Clark Bell, Albert Bach, Dr. J. M. Carnochan, Dr. Chas. Milne, Dr. Chas. F. Stillman, Dr. Theo. H. Kellogg, Jacob F. Miller, Esq., Simon Stern, Esq., Dr. Ferd. C. Valentine, Wm. E. Davis, Esq., Dr. Isaac Louis Peet, and Dr. M. J. B. Messemer.

The subject coming to the notice of ELLIOTT F. SHEPARD, Esq., he requested the privilege of giving $100 as the first prize, leaving the Society to be free from the expense of the 2d and 3d prizes to be covered by the subscriptions of the several gentlemen.

The prizes were announced, upon approval of the society, through the public press, and the MEDICO-LEGAL JOURNAL, and by circular sent to the members of the Society and to home and foreign bodies who were thought to take an interest in the subject, and the competition closed June 1, 1883, with ten essays in competition.

The President of the society, Mr. Clark Bell, named the following committee to make the award :—

Ex Chief Justice NOAH DAVIS, Chairman.

E. W. CHAMBERLAIN, Esq , Treasurer of the Society, as Secretary.

STEPHEN SMITH, M.D., Ex State Commission in Lunacy.

Ex-Judge JOHN F. DILLON of New York City.

W. G. STEVENSON, M.D , Vice President of the Society.

This Committee made the following award :

1st PRIZE.—To the paper entitled : "Circumstantial Evidence in Poisoning Cases," by JOHN H. WIGMORE, Esq , of the Boston Bar.

2d PRIZE.—"Insanity as a Defense to the Charge of Crime," by J. HUGO GRIMM, Esq , of the St. Louis Bar.

3d PRIZE.—"The Insanity of Child Birth in its Relation to Infanticide."

Honorable mention was made of the following papers :

"A Clinical and Forensic Study of France," by Prof. EDWARD PAYSON THWING, M. D.

"Belgium and her Insane Institutions," by CLARK BELL, Esq.

"Admissibility of Medical Books in Evidence," by JOHN H. WIGMORE, Esq.

The proposal to publish the whole of the ten essays in a volume, was not within the ability of the Society, by reason of the expense and of conflict of views among the authors of the papers.

The three papers awarded prizes, and two of those receiving honorable mention, were published in the MEDICO-LEGAL JOURNAL.

The authors of three of the papers were disinclined to have their papers appear in the present volumes, and the remaining papers are now published with the assent of their authors, making seven of the ten papers that were passed upon by the committee of award.

The expense of this publication falls upon a few individuals who regarded the initiation of this movement as of great importance in its relation to the advance of the science of Medical Jurisprudence.

While it is to be regretted that all the papers are not embraced, it is confidently hoped that the friends of the science throughout the world will regard this initial volume of Prize Essays as a notable addition to the literature of Forensic Medicine, and a commencement in the progress of the science of Medical Jurisprudence, entitling the Medico-Legal Society to credit, as well as the gentlemen of its Executive Committee, so honorably and prominently identified with the commencement and completion of the competition.

It is thought proper to state that the success of the first competition induced the President of the Medico-Legal Society, Mr. CLARK BELL, to offer a first prize of *One Hundred Dollars*, and the Society a second prize of Seventy-Five, and a third prize of Fifty Dollars, the competion for which closed on Dec. 31, 1889, and the result of which will be announced in the MEDICO-LEGAL JOURNAL when the prizes are awarded. The Executive Committee have again decided to offer prizes for the year 1890, at a large meeting held February 12th, 1890, at the residence of Prof H. A. Mott, Jr., the details of which will be announced in the March number of the MEDICO LEGAL JOURNAL.

This feature of the work of the Medico-Legal Society, now that it has assumed a national character, and with the interest awakened by the International Medico-Legal Congress, held under its auspices in the City of New York in June, 1889, should no longer be left to the few gentlemen who compose the Executive Committee of the body.

It should be assumed by general contributions from the members at large, or by individuals who are willing to offer individual prizes as stimulus for this competition. The amount charged for the volume will not cover its cost; that will fall upon a few gentlemen, and the Medico-Legal Society will not be called upon to defray any part of this expense, unless it should be to subscribe for copies for those scientific bodies to whom its publications are sent.

New York, February 1, 1890.

*INSANITY AS A DEFENCE TO THE CHARGE OF CRIME.**

By J. Hugo Grimm, Esq., of St. Louis, Mo.

One of the most distinguished of American Judges, in delivering an opinion in a well known case, remarked that "of all medico-legal questions, those connected with insanity are the most difficult and perplexing;" and with this statement all who have ever considered the subject of insanity in its legal relations will fully agree. It was not, however, on account of its character in this respect that I selected my subject, but rather on account of the interest I feel all thoughtful people have in the subject, and of its great importance to the community at large.

There are several reasons which contribute to the great doubt, which, notwithstanding the careful and painstaking study which it has received for more than a century by both the medical and the legal profession, still envelopes this subject. There are doubts and uncertainties not only as to the nature of the disease itself, but also as to its true relation to the law,—the fact of its existence being satisfactorily established.

And first, the subject presents to the medical world a field still to a great extent unexplored. The line between sanity and insanity is so shadowy and ill-defined that there are to be found many cases, indeed, in which experts are not agreed as to whether they fall on the dark or on the light side of the line. Again, it is clear from

* Read before the Medico-Legal Society, February 13, 1889. This essay won the second prize in the competition, awarded by the committee of the Medico-Legal Society.

the variety of definitions of this malady to be found in the writings of those who have made it a study, that different medical experts form different conceptions of its nature and causes.

That insanity is manifested by abnormal conduct, resulting from abnormal action of the mind, is probably admitted on all hands; but as to what it is that produces this abnormal action of the mind there is some diversity of opinion. It seems that some experts, still holding to the philosophy which sees in man a duality —a union of matter and spirit—admit that the disease may have its seat in the spiritual essence, or that the abnormal action of the mind may be due to a disturbed relationship between these two constituent factors. Others, and I might say the great majority of the medical profession, clinging to the materialistic philosophy, scout such ideas as these, and insist that physical disease is the basis of insanity. This materialistic view, to which there can be no objection from a purely legal standpoint, has resulted in two different classes of definitions of insanity, the one based on the deranged function, the other on the physical disease producing the disturbed function. These definitions, we see, are the result of the different aspects in which the same thing is viewed; in the one the conduct is kept in view while physical disease is admitted as causing it, while in the other the disease is the fact before the mind while abnormal conduct is recognized as its effect. It is natural that the doctor will perfer the latter class of definitions, and just as natural that the lawyer will prefer the former, for it is disease that the doctor is looking after, and it is conduct which primarily engages the lawyer.

While, as was said, the majority of the medical profession agree that physical disease is the cause of abnor-

mal mental function (whether they call the disturbed action of the mind "insanity," or whether they designate the disease itself by that term), the exact nature of this disease, or its location in the human body, have not been determined. Many find the physical cause in a diseased brain, others hold that the disease may be located in any portion of the nervous system even outside of what is commonly understood by the brain. Others find the cause of insanity in the blood. In the "American Journal of Insanity" for April, 1859, I read :— 'Insanity, in a purely medical sense, is a hypothetical form of bodily disease. To this term are referred only those cases in which mental derangement exists, and in which no organic basis or other proximate cause can be determined." "Thus, softening of brain, sunstroke, fracture of skull, fevers and alcoholic and other poisoning are not insanity, though more or less connected with derangement of mind." This quotation while it does not justify any such inference as that the basis of insanity is not physical, does show that at the time the article from which I quote was written the nature and location in the human body of the disease lying at the root of insanity had not by any means been determined. And as to these two questions it does not seem that more recent investigations have thrown much light upon them.

Now, then, without looking further for the physical cause of insanity, for this can be of little consequence in the present discussion, let us ask how its presence is shown. The answer is, "By abnormal conduct, for conduct, including language, of course, is the only manifestation of the action of the mind." Insanity, then, is shown by abnormal conduct. What conduct is to be characterized as abnormal is, of course, a rather delicate

question, and I presume no one has been rash enough to venture a definition of insanity based on a person's actions and conduct merely. Each case must be judged for itself; conduct which would be decidedly abnormal in one, would be just as decidedly natural in a different person.

The great and almost insuperable difficulties inhering in this question of insanity, have been fully appreciated, and many eminent scholars have denied that the term could be defined. As a form of disease it is quite likely that any definition of it would be unsatisfactory, nor, I presume, is it necessary as far as the medical profession is concerned to have a definition of the term. When we come to the law, however, and speak of insanity as being a defence to crime, we must have a clearly defined notion of what is meant by the term,—it then becomes a legal term, and like every other legal term, must have an exact, call it techinal if you will, meaning. The law determines what acts are forbidden, and also determines what shall be an excuse for the commission of a forbidden act. Now, the terms expressing these forbidden acts (crimes) as well as those expressing the conceptions of what constitute defences must have a precise, certain, and exact meaning. Therefore, if "insanity" is to be allowed as a defence to crime, that term must express a clear idea, and that idea or conception can only be made clear by defining the term which expresses it. Hence the absolute necessity of a definition of insanity by the law, if insanity is to be used as expressing a defence. It is, therefore, necessary that the law either define what it understands as insanity which will excuse from the consequences of the violation of an act forbidden by law, or reject the term entirely, as having no legal meaning. From what has gone before it will be clear

that if insanity is to be allowed as a defence, it must be on the ground that it relieves from responsibility to the law, and what will relieve from such responsibility must be determined by the law itself; therefore, if this defence be allowed, the law must determine what it understands by that term. When we speak of insanity as being a defence to crime, we do not mean that insanity, as understood by our medical friends, is a good plea to a criminal charge, but that there are certain mental states of persons which the law recognizes as relieving from responsibility, and which mental states are for convenience designated by the term insanity. "Insanity" thus used is a legal term, having a technical meaning. Or to use the words of a writer in high standing,—

> "For judicial purposes, insanity is merely a term to cover a certain class of exceptions from the current presumption as to persons of a certain age, who are, other circumstances being favorable, competent to foresee the consequences of their acts."

Insanity thus used as a legal term has a very different meaning from that given to the word by the medical profession, and this should not be lost sight of.

I call attention to these facts for the reason that insanity has at times been defined by different Courts, and that these definitions have been severely criticised, especially by medical experts, and I might add with Mr. Bishop, probably because these medical critics failed to a great extent to understand the judges whom they so severely criticised.

It should always be remembered that when insanity is spoken of in the law, it is not a disease which is meant, but a certain mental condition recognized by law as relieving from responsibility,—the character of the evidence to be admitted in proof of which is also necessarily determined by the law itself.

In order to comprehend what is meant when it is

stated that insanity is a legal defence to a charge of crime, it will be necessary to examine briefly into what constitutes crime, its definition and essential elements, and into what the law requires to render responsible, and into what it admits as removing responsibility.

A crime has been defined as ;—

"An act committed or omitted in violation of a public law either forbidding or commanding it." 4 Blacks., Comm. 5.

It is an act of disobedience to a law, forbidden under pain of punishment, the penalty being inflicted by the law-making power specifically as punishment.

Every person committing an act forbidden by the public law is *prima facie* guilty of crime, and in the absence of proof of facts which are sufficient in law to excuse the act—that is, such as destroy one or the other of the elements comprehended in the legal conception of crime—he is responsible. What these elements are, and their philosophical basis, we shall now consider.

Human laws are enacted for the government and protection of moral beings; only moral beings are subject to human laws, and they only are responsible for the infraction of these laws. Reason and freedom of will—that is, the power to determine one's own actions—are, I take it, the essentials to moral accountability. And these two factors are necessary to accountability to the law. While the same elements are the basis of both moral and legal responsibility, the conceptions of these two classes of responsibility are yet not the same, and the cause of the difference is to be found in the different presumptions which the law indulges on grounds of expedience or of necessity, which presumptions are in many cases natural, being based on the result of experience and observation, and in the other cases necessary to any administration of law.

These elements of responsibility, as understood in the law, have received technical legal names, and are,—

(*a*) Criminal intent, and (*b*) free will.

Let us now consider these elements of legal responsibility, for whatever defence to a crime is permitted at law must be allowed, because it destroys one or the other or both of these elements. Insanity to be a defence must, therefore, destroy either or both of these elements, and we can now clearly see the distinction between insanity as viewed by alienists and the legal term "insanity." One may be unquestionably insane in a medical point of view and still responsible to the law, since neither of the legal elements of crime are destroyed, and, therefore, not insane in the legal sense of that term.

What now is the meaning of "criminal intent?"

It is absolutely necessary that we come to a clear understanding as to the signification of this phrase, for in the absence of criminal intent there can be no crime.

By a criminal intent I understand this: it is nothing more than a consciousness on the part of the wrongdoer that the act he is about to commit is forbidden by public law.

We have said that inasmuch as human laws are enacted for the government of moral beings, responsibility to these laws is based upon the same notions as is moral responsibility; also that the essentials to moral responsibility are knowledge of the wrongful character of the act in question and power to refrain from doing it. Criminal intent, then, is this element of knowledge that the act was wrongful. It is this moral element modified somewhat by necessary rules and presumptions of law. The basis of responsibility is the knowledge that the act is wrong. Now, here appears a dis-

tinction between law and morals. While there may be some doubt as to whether an act is morally right or wrong, since this is to be determined by each individual in accordance with the standard of right and wrong which he has formed for himself, there can be no doubt as to what is legally right and wrong since that is determined definitely by an authority acknowledged to have the power to determine it. Now, while in the absence of a positive announcement as to the character of an act as right or wrong, one might excuse his commission of the act on the ground that he did not know it was wrong; that, according to his individual notions of right and wrong (which would be of moral right and wrong), the act was right and proper, still, where the wrongful character of the act is made known to him, he is not excused for doing it, but is even morally responsible. Even in the case where he thought that the act was not in itself wrongful, still, where he knew that the proper authority had decided or declared it to be such, he would be responsible. Now, when the law forbids an act, that act is *ipso facto* a wrongful one, and whoever does it, knowing it to be wrongful (declared so), is morally guilty. Here, then, is the moral element in legal responsibility. This consciousness that the act contemplated is forbidden by the public law is, then, what is really meant by "criminal intent." But here appears a further distinction between the pure moral element of knowledge of the wrongful character of the act, and the modification of that element designated "criminal intent;" for, while to moral responsibility pure and simple, actual knowledge that the act is wrongful is necessary (actual consciousness of the character of the act is necessary), yet, to make out a criminal intent, actual knowledge that the act is forbidden by law is not at all necessary, nor need

it be shown. He is considered as being conscious that the act is forbidden, and though, as a matter of fact, he did not have this consciousness, he will not be permitted to prove this fact. It is his duty to know what is allowed and what is forbidden by law, and though there are facts which in morals would excuse want of knowledge as to character of an act, these will not be accepted in the law. Where one neglects a duty—as in this case to inform himself as to what is wrong –he is morally responsible. We thus see that the moral element of responsibility is never lost sight of in holding one responsible to the law, although this element is brought within narrower bounds. And this leads us directly to a consideration of several presumptions of law, the existence and necessity of which were adverted to before.

And first the law presumes that every person within its dominion knows the law—knows what it commands and forbids. It needs no argument to prove that this presumption is one which must be made. It is a conclusive presumption of law, and no evidence should be admitted to rebut it.

Another presumption indulged by the law, and which is a natural presumption, is that every person knows the nature and natural consequences of his acts. Now this presumption may be rebutted, for to permit its denial would not make the administration of law utterly impossible, as would the admission of proof of ignorance of the law.

When, then, it is shown that one has committed an act forbidden by public law, that he knew it was thus forbidden—and the rule of the law will not permit him to deny that he did—and that he knew the natural (not legal) consequences of his act, criminal intent is shown, —the moral element is present.

From this analysis of the notion of criminal intent it will appear that legal responsibility attaches in many cases where there is an entire absence of moral responsibility. Thus, unless the person actually knew that the act was forbidden he is not morally responsible; but he certainly is responsible to the law, even though he did not actually know that he was doing what was forbidden, and therefore wrong. For it is his duty to know what the law commands and forbids, and his failure to inform himself on this point is of itself a wrong—a breach of his duty as a citizen. The moral element in crime, (this criminal intent) is entirely independent of all consideration of the wrong-doer's notions of the character of the act as gauged by his own standard of right and wrong,—of actual knowledge that the wrong done was a violation of the public law,—and of course independent of any considerations of his motive in doing the act.

Any defence to crime which is based on the theory that criminal intent is absent, must prove such facts as the law considers sufficient to disprove, not the presumption of knowledge of the law, for that is conclusive, but the presumption that every person knows the natural consequences of his acts. What proof will be sufficient in character to rebut this presumption is determined by the law.

Having now considered the element of criminal intent rather fully, it remains to advert to the other element of crime, the existence of a free will. This, like the element of criminal intent, is based on sound notions of moral guilt. For no one is morally responsible for an act which he did not do of his own free will. Nor is any one responsible to the law for an act he could not help doing. But as in the case of criminal intent the law presumes that every person knows the natural con-

sequences of his act, and also determines what state of facts, if proved, will destroy this presumption, so in the case of free will, the law presumes that every person has a free will, (the power to determine his own actions), and also determines what state of facts, if shown to exist, will be considered as rebutting this presumption.

If my views thus far expressed are assented to, and I hope they will be by many, although I do not doubt many will not share them, then the conclusion must follow, that any defence to crime, no matter what it be, must be based on a denial of either the presumption that the person committing the crime knew the natural consequences of his act, or a denial of the presumption that he was a free moral agent, in other words, that he did the act of his own free will. A consideration of the different defences allowed will, I think, show that they are all based on a denial of one or the other of these presumptions. And a consideration of these defences will lead us directly to the principal topic of this essay, for, in my opinion, insanity, where it has been allowed, was on the ground that it destroyed one or the other of these presumptions, and where it has not been allowed, it was refused because its character or degree was not such as the law could allow as disproving either of these presumptions.

Let us now briefly consider the various defences allowed by law, where the commission of the act is admitted, but its criminal character denied.

Ignorance or mistake of fact. The law allows as a defence to a charge of crime, proof that the act was done under a mistake of fact, in all cases where the act would not have been unlawful had the fact really existed as it was supposed to exist; likewise where one does an act in ignorance of a fact, where the criminal character of

the act depends upon the existence of the fact which is unknown—except in such cases in which the law specifically prescribes the knowledge of the fact as a duty.

Here there is no intent to do an act which is forbidden, but an intent to do an act allowed by law. Here there is no moral responsibility, because the act intended to be done was not declared to be a crime. The person, on account of his mistake or ignorance of some fact, could not foresee the natural consequences of his act. Such a state of facts are allowed as destroying the presumption that the actor could foresee the natural consequences of the act done.

Infancy. Where it is shown that the act was committed by one under the age of seven years, the offender is excused, on the ground, it is said, that an infant within that age is conclusively presumed to be incapable of entertaining a criminal intent. It is sometimes stated that this presumption is based upon the notion that one of such tender years has not the capacity to know what is forbidden and what not. I submit that it would be much more logical and consistent with legal principles to base this presumption on the ground that the infant has not the capacity to know the natural consequences of his acts. The important fact, of course, is, that the law indulges this presumption of incapacity, and it makes no great practical difference whether it is indulged for one reason or the other. But if the presumption is to be accounted for by one of the two reasons, the one consistent with established principles, and the other inconsistent therewith, it is better to adopt the former reason. I submit that the presumption of law that all persons know what is forbidden is a conclusive presumption, admiting of no exception, and irrebutable. The presumption that every person knows the natural

consequences of his acts, on the other hand, is a presumption of fact which may be disproved. Now, in the law, it is considered that proof that the offender is within the age of seven years, is proof sufficient to show that he did not have capacity to entertain a criminal intent.

Reason surely favors the view that this presumption is based on the infant's incapacity to understand the natural consequences of his act.

Intoxication is also allowed as a defence, if such a degree of intoxication is shown as would deprive the defendant of the power to know the natural consequences of his act.

The defences thus far considered are allowed on the ground that they destroy the element of criminal intent. Before taking up the question of insanity as a defence, it will be well to ouch upon the state of facts admitted in law as destroying the other essential of crime,—the existence of capacity in the accused to determine his own acts.

Free Will. As we have seen, the law presumes that all persons have the power to determine their own actions, and that when one does an act he do s it freely. As rebutting this presumption, the law allows proof showing that the act was done under compulsion or necessity ; but a mere subjective state of feeling, sentiment, passion, or the like, is not compulsion or necessity, such as the law recognizes. To be admitted as a plea in law the compulsion (also termed duress) must act on the accused from without ; the act must not have been determined by himself, but must have been the consequence of some power or force without him, and over which he had no control, which, in fact, caused the act, his will having been overcome by it, and he acting as a mere medium. In law, strong motives, the passions

and desires are not considered as sufficient to destroy volition, in truth these are the very things which the law is to restrain. Nor is disease considered as sufficient to destroy the will. To allow proof of disease as a defence, on the ground that it destroys the control of the will, would be extremely dangerous, and could only be admitted if it were established that a certain disease, or certain diseases were accompanied by a loss of control over the will. Proof of these forms of disease would then be admissible as defence.

We are now in a position to direct our attention to the question of insanity regarded as a defence to a charge of crime.

From what has preceded, we see that the defence of insanity is to be allowed, not because the accused was of unsound mind merely, but because there was such a degree of insanity as to disprove the existence of one or the other or both the elements of crime. In the words of Baron Alderson: "It is not because a man is insane that he is u .punishable;" "and," he proceeds, "I must say that upon this point there exists a very grievous delusion in the minds of the medical men. The only insanity which excuses a man for his acts, is that species of delusion which conduced to and drove him to the act alleged against him." To be more explicit, the insanity must be of such a character, or degree, as will negative the presumption that the wrongdoer knew the natural consequences of his act, or the other presumption, namely, that the wrongful act was the result of his own free will. If the insanity was of such a degree it is insanity in the law, and as such is a defence to crime, but if it be not of a degree which is deemed sufficient to negative one or the other of these presumptions, it is not insanity in the law, and the fact that the mind of

the criminal was weak or unsound is no defence. What conditions of mind, or what degrees of insanity are allowed as destroying either of these presumptions, or in other words, are allowed as defences to the charge of crime, we shall now proceed to consider.

At the very threshold of this discussion I wish particularly to call attention to two facts, which must not be lost sight of. And first, that it is the exietence in the accused of a certain mental state that excuses from crime, and—second, that the law determines what ultimate facts shall be allowed to be proved as showing such mental condition, as well as the competency and relevancy of the evidence adduced in proof thereof, although the existence or non-existence of these facts is to be decided by the jury in each case.

This necessary mental condition is such a mental state as negatives the existence of a "criminal intent," (the meaning of which term has already been explained), or of free will, the nature of which also has been adverted to.

Among the various facts admitted as proof of such a mental state as shows absence of criminal intent are certain forms and degrees of insanity. Let us now inquire into what these forms and degrees of insanity are.

(1) *Total Insanity.* This term is intended to include all cases where the intellectual faculties are entirely deranged. There are several forms of this degree recognized in the medical profession, but for our purpose the classifications of this disease by the doctors are of little assistance. What is meant by total insanity is merely such a degree of mental derangement or mental weakness as prevents the sufferer from comprehending his relation to other beings or things. The term is used in contradistinction to the term "partial insanity"

which is intended to cover cases in which the person is apparently insane only as to one or more subjects, and seems to be otherwise sane.

Now, where this total insanity is of such a degree as to show that the person had not the power to know the natural consequences of his acts, he is not responsible in the law. Some forms of total insanity so clearly incapacitate the sufferer from knowing the consequences of his acts, as for instance, mania, that the proof of his being afflicted with this form of insanity is sufficient to excuse him, but it is to be remembered that he is excused not because he is afflicted with this or that particular form of insanity, but because the fact that he is so afflicted, proves that he had not the capacity to know the consequences of his act.

The rule, then, is, that where one suffered under such a form or degree of insanity as prevented him from knowing the natural consequences of his act he is undoubtedly irresponsible.

This rule has been differently expressed, thus:

"To establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that he was doing what was wrong."

This quotation is taken from the answers of fifteen judges, in 1843, in response to the interrogatories propounded by the House of Lords, of England, relating to the defence of insanity.

The language of this rule is not clear, and has been subject to considerable, and, I think, just criticism. The expression "nature and quality of the act" here used is somewhat vague. I should say it meant no more than that the accused did not know the natural consequences of the act in question. The concluding part of the

answer, that is, "or if he did know it, that he did not know that he was doing wrong," is not, with all respect to the learned judges, sound law. I submit that the mere lack of knowledge of the wrongful character of the act, whether we take it to mean wrongful as against morals or as against law, is not in itself an excuse for crime. In the first place if by wrong is understood moral wrong, the objection is that the law does not concern itself with moral wrongs; that it could not if it would, since there are as many standards of moral wrong as there are persons, and that what to the majority of people would be a most immoral act, might be perfectly proper according to the peculiar standard of the accused. An act which in itself may be perfectly harmless, in fact, praiseworthy, if forbidden by law, is nevertheless a crime, and the person committing it could not excuse himself on the ground that it was not morally wrong, even though everybody should agree with him that it was not. On the other hand, no matter how much an act shocked our consciences, to commit it would not be a crime unless the law forbade it. If, on the other hand, "wrong" as used in the answer means legal wrong, the objection is that no one is permitted to say that he did not know an act was forbidden by law,—he must know it; that is his duty.

If we are to construe this answer so as to reconcile it to legal principles, we must construe this latter portion as meaning nothing more than that the accused did not know the natural consequences of his act. If he did know these, neither the fact that the act was not wrongful morally, nor the fact that he did not know it was forbidden by law, will avail as a defence.

We have been speaking of total insanity, that is

to say with reference to total insanity especially, but even what is known as partial insanity will be sufficient, if as a result of the partial insanity the accused did not know the natural consequences of the act in question. The rule of the English judges, from which I have quoted, seems to have in view cases of total insanity, and apparently intends merely to state the degree of such insanity which in law will acquit. In other words, it merely goes so far as to state that insanity of the character and degree there set out, that is of such degree as shows the accused to have been incapable of knowing the natural consequences of the act in question, is sufficient evidence of incapacity to entertain a criminal intent. This rule does not attempt to define insanity, but does in fact point out an element of legal responsibility (though not accurately) and states that such degree of insanity as will destroy this element (knowledge of the natural consequences of the act done) is a defence.

I have already stated that partial insanity may be a defence, and this brings us to the subject of delusions.

Delusions.—Partial insanity is usually treated of separately in the books, and is frequently spoken of as monomania. Just why—in law books at least—"partial insanity" should form a distinct title is not very clear. In fact, it is not clear why any classification of mental affections should be adopted or recognized in the law. I take it that the rule of responsibility is not different whether the accused be totally insane or merely laboring under a delusion. In either case, if the disease prevented him from knowing what would be the natural consequence of his act, he is not responsible; as to whether he would in either case be responsible if he did know what the consequence would be, we shall consider further on. If this element of criminal intent

were the only element to a crime, he certainly would be responsible under this latter supposition.

The English judges laid down a separate rule as to cases of delusion. Here is their answer on that topic:

"The answer must, of course, depend on the nature of the delusion: but, making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not otherwise insane, we think must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real."

Which rule was somewhat differently stated by Chief Justice Shaw:

"Monomania may operate as an excuse for a criminal act when the delusion is such that the person under its influence has a real and firm belief of some fact not true in itself, but which, if true, would excuse his act."

The sense of these passages seems to be that if the accused insanely believes in the existence of some fact which does not really exist, he is to be treated as though the facts as he supposed them really existed, and if their real existence would have justified or excused his act, he is to be acquitted; but if, on the contrary, his act would not be justifiable or excusable even though the facts were as they appeared to him, then he must be convicted. This is clearly treating an insane delusion as a mere mistake or as ignorance of fact, which we saw excuse the act, on the ground that the act intended was lawful. In these cases of delusion, where the accused would, under these rules, be acquitted, is it not a fact that he does not know the natural consequences of the act he is about to do? The natural consequences of his act are not foreseen, because of a mistake or ignorance of a material fact, under which mistake or ignorance the consequences of the act would appear to him entirely different from what they will actually be. This rule as to delusions is, then, in reality, nothing more than a statement of the principle of law, that

in the absence of a "criminal intent," as above defined, there can be no crime.

In all the cases of insanity which we have thus far examined, we have found that the defence has been allowed, not because the accused was insane in the sense of that term as used by alienists, but because the mental condition of the accused at the time he committed the act was shown to be such that he did not know the natural consequences of his act. Not only is that the case in respect of the defences of insanity which we have considered thus far, but it is, in fact, the case with respect to every other defence thus far specifically considered.

If we were now to formulate a rule as to insanity based upon the above considerations, it would read about thus:—

Where it is shown that the accused was laboring under such a defect or derangement of mind as not to know what would be the natural consequences of the act he then did, he is not responsible. This proposition is stated with reference to insanity. It might be stated more broadly and generally so as to include any case in which the accused did not know the natural consequences of his act, no matter what the cause of this disability, whether ignorance, or mistake of fact, or mental disease ; but as we are especially concerned with the plea of insanity, the proposition is stated with reference to that disease.

We have thus far spoken of forms, or rather degrees of insanity, the existence of which, when proven, is undoubtedly a good defence. Let us now consider whether there are any other cases or degrees of mental defect or derangement which confer irresponsibility.

It has been frequently urged that the rule of knowl-

edge of the character of the act done or that it was wrong (or, as it should be stated, of the natural consequences of the act in question), is too narrow, and that there are many cases in which the accused, although he had the mental capacity contemplated in this rule, should still be held irresponsible, for the reason that he was laboring under disease affecting his mind to such a degree and in such a manner, that although he could discriminate as to his acts and comprehend his relations to other persons and things—*i. e.*, know what would be the natural consequence of the act,—he yet was unable, on account of this mental defect, to refrain from doing the wrongful act ;—that it was done under duress of the mental disease, and that, consequently, he should not be held responsible. Many medical experts have a peculiar way of pronouncing such a person irresponsible upon the supposition, I suppose, that responsibility and irresponsibility are medical questions. Now, a medical expert has no right to tell a jury that the accused is irresponsible, or, on the other hand, to tell them that he is responsible. A person is responsible or not according as the law holds him liable or excuses him, and if the law should be that all insane persons committing acts forbidden by law should be punished just as are sane offenders, the insane would be responsible. The question involved is legal responsibility, and this depends on the law itself.

Since the issue involved in the criticism of the test of responsibility which we considered is a legal question, let us inquire whether or not according to law as it now is in force a person who does an act under duress of a disease affecting his mind is excused even though he possess the mental capacity which would hold him liable under the rule as to intellectual capacity heretofore

considered. When we have determined what the law in any locality is on this point, we know whether or not the person in the condition here described is responsible or not. Whether the law is wrong or not, or should be modified, is another question, which we shall also consider. And first, what is the law?

By the law of England, a person, although insane, is responsible if he knew "the nature and quality of his act" or "that it was wrong," irrespective of what effect his insanity might have on his power of self-control. In other words, if one knows an act to be wrong, he must refrain from doing it, and he is not allowed to show that the insanity deprived him of his freedom of will.

This is also the law in many—I might say the majority—of the American States.

Quite a number of the American States, however, allow the defence here urged, and admit evidence going to prove that, although the accused had the capacity to know the natural consequences of his act, he yet was unable, by reason of disease affecting his mind to desist from doing the act which was forbidden by law. Since the courts governed by the common law are thus divided on this question, it will be proper to inquire into the reason of this conflict of opinion, and to select that doctrine which seems most consistent with settled legal principles and best calculated to carry out the objects of the law.

In considering the question whether one who can show that he was by mental disease deprived of his power of self-control, although his intellectual faculties were not so impaired as to excuse him on that ground alone, should be held responsible or not, it will be well to recall the elements of legal responsibility. We have seen that

a "criminal intent" and "free will" are essential to responsibility, and that if either of these elements are wanting there is no crime. In the question now before us, the first element of responsibility (criminal intent) is present. The problem, then, to be solved is simply this: Is it a defence to a criminal charge to show simply that the accused was laboring under insanity of such a character or degree as shows that he could not refrain from doing the act in question?

The legal principle that where an act is done involuntarily,—where it is not the free act of the accused—he is not responsible for it, is clear. And this principle is, I take it, admitted by all the courts whether they allow the defence now under discussion or not. The real question which lies at the bottom of this troublesome problem is: "What evidence is competent to show an absence of free will?" and it is upon this rock that the courts have split.

Those courts which refuse to admit evidence that mental disease destroyed the power of self-control irrespective of its effect on the intellect, exclude this evidence upon one or other of two theories, or perhaps both.

They proceed on the theory that where one is able to know the natural consequences of his acts, evidence of insanity does not even tend to prove a want of freedom of will; or upon the theory that though it could be positively shown that insanity did destroy the will while it left the intellectual capacity necessary to responsibility, such fact would constitute no defence whatever.

The former theory is based upon a metaphysical notion as to the nature of free will; that the freedom of the will is limited only by its intelligence. The latter position is taken on grounds of policy.

In regard to the theory that the will is always free to act whenever the mind can foresee the natural consequences of an act, even though the mind be diseased, that theory is all but completely overthrown by the more recent investigations of medical science. It would not be very extravagant to say that the medical writers of this day are unanimous in denying this th ory. And if this were the only ground of excluding evidence of this character of insanity, I must say there would be little trouble in solving the problem before us.

But the most serious objections to admitting evidence of the kind of insanity now in question, arise from considerations of public policy. The doctrine that this degree of insanity is a defence is extremely dangerous, and I presume the denial of this defence has been greatly due to the danger attending its admission. We all know that when every other plea fails, insanity is adopted; that many have been acquitted under this plea who fully merited the direst punishment. Then it must be remembered that science can not point out to us specific classes of mental disease and say: "Where one of these classes of insanity is found, the patient has no self-control." It tells us rather that each case depends on its own circumstances; that each case must be examined by itself and determined for itself. Now, when this defence is allowed very great latitude is given the jury, and the safety of society is put into their hands,—and the hands of the medical experts who may be called to the trial. This seems to be the reasoning where this defence is denied. And it can not be gainsaid that it would have great weight with the judges—those called to administer the laws; to protect society; those to whom society looks for protection, and holds responsible if they are remiss in that holy duty.

Another objection to admitting proof of mental disease as destroying the element of free will is the fact that in all cases where a defence has been allowed on the theory that the act was not the result of the offender's free will, that free will was overcome by some power outside of the accused and over which he had no control. Physical disease was never allowed as affecting the freedom of will—nor could it properly—and hence it was only natural to exclude proof of mental disease offered for the same purpose.

These seem to be the principal reasons which are to be urged against permitting the defence under discussion, and unless they can be answered, or stronger reasons given why this defence should be admitted, it ought not to be allowed.

Let us now consider these objections.

To the first objection that the freedom of the will is only limited by the intelligence of the individual, and that disease of such a degree as leaves his intellect sufficiently strong to entertain a criminal intent, can not destroy the power of choosing between doing and refraining from any act, the answer is simply that science has satisfactorily shown that as a matter of fact disease can thus affect the mind and will.

Now are the objections based upon public policy unanswerable? While it is true that the plea of insanity is frequently improperly resorted to, and that guilty men occasionally escape, we can not lay much stress on that, for we are all willing and proud to admit that our criminal law proceeds upon the principle that it were better that ten guilty should escape than that one innocent should suffer. Moreover, the danger to society is not so very great, for madmen are not now, after their acquittal from a criminal charge, turned loose upon the community, but confined to asylums for treatment.

The point which is sometimes made, that to allow the jury to determine in each individual case whether as a matter of fact there existed disease in the accused affecting the mind to such an extent as to have deprived him of the power to refrain from doing the act, would be to permit them to determine what is legal responsibility, can not be admitted, for if the judge instructs them that if the defendant was suffering under a disease of mind which was of such a degree or character as to have deprived him of the power to refrain from doing the act, this instruction defines responsibility and the jury merely decide a question of fact, which it is their province to decide. Besides, the court determines what facts may be proved as showing the existence of such disease, and will rule out as incompetent any improper evidence. Moreover, it is a fact that where the defence is made on the other theory under which insanity excuses, the jury and experts have exactly the same latitude allowed them as they would have here. They are to determine whether the defendant "knew the nature and quality of his act" or "knew that it was wrong." Each individual case is determined according to its own circumstances under this rule, as it would be in the other, and the jury might with the same propriety be said to determine what constitutes responsibility, when acting under this rule as when acting under the one proposed. The fact is that the jury do not determine what the law is when instructed under this rule, nor would they if instructed upon the theory as to the loss of self-control. In each case the law would determine exactly what is essential to responsibility, what facts are admissible to disprove either of these elements and the jury would find the existence or non-existence of these facts.

The other objection to allowing this defence, drawn from analogy, requires no answer. It merely amounts to this: "We have not allowed proof of mere physical disease as competent to disprove free will; therefore we will also disallow proof of mental disease although the mental disease be of such a character as is acknowledged will disprove the existence of a free will."

We have now answered all the objections to allowing proof of mental disease of such a character as will show to the jury that the defendant could not help doing the act.

Since, then, there is no valid reason for disallowing this defence, it should be admitted since it so clearly destroys one of the essential elements of crime.

From what has preceded we have seen that as to insanity all that the courts have done has been to instruct the juries that to constitute a crime the accused must have had a criminal intent as above defined, and that if his mind was so affected by disease as to make it impossible for him to have had this criminal intent, he must be acquitted. They have not attempted to define insanity as a disease. They have merely told the jury what one essential element of crime is, and if they (the jury) should find that that element was absent, that they must acquit. Now, there is another element just as essential to crime, which is free will, and how can courts refuse to instruct juries that if there is an absence of this free will there can be no crime? Insanity was allowed to be proved as showing this incapacity to have a criminal intent because science showed that insanity did in some of its phases and degrees have this effect. The same science has now shown that insanity sometimes has the effect of depriving the sufferer of his power of self-control; why then should they, or how can courts refuse to allow evi-

dence tending to show that insanity in the case in question did have the effect of compelling the defendant to do the act in question, though he knew it to be forbidden, or had capacity to know it was forbidden?

In many cases of so-called partial insanity, where the accused was laboring under delusion, he has been acquitted, even though he must have known the results of his act, or "that it was wrong," and the acquittal held proper. In these cases the prisoner was undoubtedly properly acquitted, but not because he did not know the natural consequences of his act, but because from duress of his disease he was unable to refrain from doing the act. The juries in these cases acquitted under the so-called "right and wrong" test, the test heretofore considered. In the celebrated case of Hadfield, in which Lord Erskine made his famous argument, the defendant unquestionably knew that the act he was about to commit was a crime—that was his very reason for doing it—still he was acquitted, and all agree that he should have been acquitted. Why, in fact, was he acquitted? Was it not because the insane delusion so affected his mind as to make it impossible for him not to do it?

That free will is an essential element of crime, and that it should be left to the jury to determine whether or not the accused suffered under such a degree of insanity as destroyed his free will, was recognized by Chief Justice Shaw in the case of Commonwealth *vs.* Rogers, 7 Metc. 500, he said:

"If then it is proved, to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, whether the disease existed to so high a degree, that for the time being it overwhelmed the reason, conscience, and judgment, *and whether the prisoner, in committing the homicide, acted*

from an irresistible and uncontrollable impulse; if so, then the act was not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it."

That a person should be acquitted where he acts from an uncontrollable impulse resulting from mental disease, ought, in my humble opinion, to be the law. On strict legal principles this defence must, I think, be allowed. That this principle has been acted on unconsciously in many cases where those laboring under a delusion, but otherwise apparently sane, were acquitted, is my firm belief.

It might be said that under this principle many laboring under delusion might be acquitted who under the English rule as to delusion would be clearly responsible. This is very true, and this is exactly what should recommend its recognition, for many who are under the English rule held responsible, should be excused, and only these would be embraced in the principle which we contend should be adopted. It is just wide enough to include those cases which the other rule improperly excludes, and also covers those cases which the other rule properly includes. The delusion rule treats one laboring under a delusion, (and the existence of which is always considered as a certain proof of insanity), as though the delusion were a mere mistake of fact and the deluded creature perfectly sane. It assumes that "a man having an insane delusion has the power to think and act in regard to it reasonably; that he is, in fact, bound to be reasonable in his unreason, sane in his insanity."

In trying to bring cases within this delusion rule, cases in which the accused was so much under the duress of his mental affliction as to be unable to resist the act, delusions of the most remarkable character, and which as

pure mistakes of fact would never have been considered as sufficient to excuse or justify the act, have been considered sufficient to warrant an acquittal. In fact, the delusion rule is a mistake, and has been the source of many mistakes and absurdities in its application.

From the somewhat extended view of the question I have taken it will appear, in my opinion, that the law governing the defence of insanity, should be as follows:

(1.) Where it is shown that the accused at the time of committing the offence was laboring under a disease affecting the mind to such a degree that he was not able to foresee the natural consequences of the act in question, he is not responsible for doing that act.

(2) Where the defendant is laboring under disease affecting his mind, which is of such a character or degree as to make it impossible for him not to do the act, he is not responsible even though he had sufficient reason to foresee the natural consequences of that act.

What is evidence of insanity must be determined by the court at the trial, but the jury determine whether it is of such a character or degree as contemplated by these two rules.

In conclusion I might add that the second rule and about which there is so much dispute, meets the full approval of that distinguished authority on criminal law, Justice Stephen, although it is not the rule which he approves so much as it is the principle underlying it, and which, of course, is the important point. Lord Chief Justice Cockburn also contends for the extension of the old right and wrong test, so as to include those cases which would fall within our second rule. The American writers of authority on this subject also favor this view.

Moreover, the criminal code of Germany contains the following:

"There is no criminal act when the actor at the time of the offence is in a *state of unconsciousness, or morbid disturbance of the mind, through which the free determination of his will is excluded.*"

This provision is a concise enunciation of the law on this subject, and the views expressed in the pages of this essay are, I think, in full harmony with it.

To one further point I must call attention before closing, and that is this. While the jury decide whether the degree or character of insanity contemplated by the two rules above deduced exists in the accused, it must be remembered that what they determine is the degree of insanity under which the accused is suffering. The court does still, and must determine what is to be admitted as evidence of the existence of insanity. In other words the courts determine the competency of evidence, while the jury determines its weight. In determining what is competent evidence to prove insanity, the courts must have a clear conception of what insanity is. As showing its existence the courts admit proof of abnormal or deranged action of the intellect; but an affection of the mind (by which is meant the intellect,—the perceptive and reasoning faculties) must be shown. While the mind is shown to be unaffected there can be no evidence admitted to show want of free will. Insanity, then, so far as the law is concerned, is a disease manifested by abnormal action of the intellect, as distinguished from the feelings or emotions. When the intellect of the accused is thus shown to be affected, when insanity in this sense is shown, it then remains for the jury to determine whether or not as a result of the existence of this insanity the accused had the capacity to know the natural consequences of his act, or if he did know the consequences of the act, whether he was yet

powerless, as a result of this insanity, to refrain from doing it.

Whether Courts should receive other proof of insanity than such as shows intellectual derangement is a question which can barely be touched upon in this place. That the great majority of our Courts hold only such facts competent to prove the existence of insanity as do show such abnormal action of the intellectual faculties is certain. Now, should other evidence than such as shows an affected intellect be admitted as competent to prove insanity in law? In other words, should the legal definition of insanity be made more extensive?

The answer to this question depends on several considerations. First, has it been satisfactorily shown that disease may affect the emotions or will without having any apparent effect on the intellect? Second, if it can, is it possible for Courts to recognize this kind of insanity without greatly endangering the security of society?

As to the first question, while there does seem to be some doubt as to it entertained by many of the medical profession, still, I think the weight of authority, even of that profession, denies the possibility of insanity of the emotions or will co-existing with intellectual sanity. Psychology certainly repudiates such notions; even the psychology of the materialists holds that the different faculties of feeling, knowing and willing are so closely connected that the powers of the one cannot seriously be impaired without affecting the others. In fact, it is hard to understand how the will or emotions can thus be affected, unless as a result of abnormal action of the intellect. Emotions and volition both are dependent upon reason, and where the sensations, perceptions and reason are not affected, it is hard to conceive of the feelings or will being thrown out of balance. On the other hand,

where it is shown that the intellect is affected, whether it be by the influence of insane delusion or otherwise, it is quite likely that such defect would result in an impaired will, or in disturbed emotions which in turn would impair the will. For when the intellect is shown to be affected, we have a case in which it may be shown that on account of false perceptions or false logical processes and conclusions, the accused was in such a state of mind as to have considered the wrongful act either one not forbidden by law, or one which he must do, and the impulse to do which, resulting from his diseased condition, he is unable to resist. But this irresistible impulse is a result of a diseased intellect, and one acting under it would be excused under the second rule which we have adduced.

Inductive scien e has not as yet shown that perverted emotions and impaired will can co-exist with mental (intellectual) sanity, and deductive science utterly denies it. Hence, of course, the law cannot allow as a defence proof of the existence of a certain condition, the possibility of the existence of which character of condition is denied by the great weight of authority.

But even if this first question were answered differently, even supposing that advancing science could show that this state of the emotions and will might coexist with mental sanity, it is questionable whether the law could allow proof of this state or condition as proving insanity, and submit to the jury whether its degree was such as would require an acquittal under the rules above stated.

Such "insanity" could hardly, if at all, be distinguished from downright depravity, since its existence is shown by conduct, and such defence, if admitted, would necessarily result in the acquittal of many of those

against whom society must be protected,—of wicked criminals. It must be remembered that the principal object of law is the protection of society, and if, in the administration of the law, an innocent person may occasionally suffer, it is his misfortune. While the administration of the law is in human hands there must be error; exact justice cannot be received from human hands. Courts of Justice must be guided by practical rules,—rules which can be used to advantage in protecting society at large. As was said by Mr. Justice Curtis:

"The law is not a medical or metaphysical science. Its search is after those practical rules which may be administered without inhumanity, for the security of civil society, by protecting it from crime."

It is better that some few should suffer unjustly than that, by too lax rules, the security of society should be endangered.

The law has, I think, drawn the line just where it should; to go further would be extremely dangerous.

If want of free will could be shown as above, in the absence of intellectual derangement, the next step would be to admit proof that no person has the power to determine his own acts. This would bring up the question whether punishment was justifiable at all,—a question which cannot now be considered, for I fear I have already exceeded the proper bounds of an essay. There are some who hold that there are no criminals in the world, and that all offences committed are due to imperfect physical constitution of the offenders, who should, therefore, be treated for disease instead of being punished. If, in conformity to the theory of these visionaries, the protection of the law were removed, I feel certain they themselves would be among the first

to complain and clamor for a restoration of criminal laws.

And now to conclude. Although we may be painfully conscious that the law is not perfect, and especially the law relative to insanity, we may gather some satisfaction in the reflection that the law is a growth, and by a process of evolution will gradually grow more and more perfect, and in the course of which evolution the questions which we have been considering will, together with many other difficult questions, be correctly determined.

THE INSANITY OF CHILD-BIRTH IN ITS RELATION TO INFANTICIDE.*

By EDWARD M. HYZER, ESQ., of the Janesville Bar, Wis.

"Sanity and insanity are to be measured by differences or changes of habit, taste or disposition."

As civilization advances, general rules become primarily and comparatively of less importance, and greater attention is given to particular instances.

The inductive method of reasoning has led to more careful investigation, definition and classification of particular facts.

This method has led us to particularize and has taught the great importance of the smallest fact.

Facts have become dignified, and we have come to respect and appreciate their great importance in the determination of all questions.

In the infancy of government, general rules were thought sufficiently just to be applicable to all instances, and all acts were measured by them without reference to the factual peculiarities of the individual cases. Rights of persons were considered justly determined by a reference to the governmental generalizations, of which only, early society was capable.

But, as we advance, the tendency of society is to approach more nearly to individual justice.

Individuals, as we come to divide, define and classify like facts, assume a greater importance.

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*Read before the Medico-Legal Society, April 10, 1889.

This paper received the third prize in the year 1888, from the Committee of the Medico-Legal Society.

The smallest right is slowly assuming its proper dignity, and the slightest differences in cases which come before social tribunals are gradually becoming cognizable. Society is ceasing to measure right and wrong and responsibility by magnificent generalities, and its tendency, its effort is, or is coming to be, to do justice according to the *facts* before it.

This is right. This is the object and purpose of true social government. Nothing of malice, nothing of revenge, nothing of retaliation should exist, but what are the *facts*, and what is justice *measured by those facts* This tendency explains the growing importance of medico-legal investigation.

It remains for workers in that field to answer the question put by society—what is criminality? What is responsibility? Do they exist in this individual or under these circumstances?

Many questions of this nature have been answered, many devils have been cast out. and much progress has been made before resistless arrays of facts, but much remains to be done. To assist society in determining these questions, to assist in bringing about simple justice and preventing injustice, even in the smallest degree, is an object worthy of the humane, the merciful, the thoughtful.

These considerations have led the writer to call attention, as far as possible in this paper, to the actual, the probable and the possible mental conditions of mothers at and immediately after giving birth to children, as bearing upon their responsibility for or the degree of criminality attaching to infanticide co mitted by them at such times.

Whether we regard insanity as brain disease primarily, certain brain states proceeding from within out-

wards, thus by reason of disease reversing the natural order; or brain disease as a result of peripheral end organ irritation; or brain disease by reason of brain degeneration as a result of physical disturbance; or brain disease as a result of hereditary brain weakness; in short, whatever we consider it, we must at last admit, if we desire to reach any practical result, that psychology and physiology are so closely related that no scientist has yet been able to separate them, nor to conceive of their separate existence, nor even to mark out any boundaries within which he can restrain either the one or the other, or even himself, while he is considering whether he have either of them apart from the other or no.

Perhaps the word insanity has been best used by Spitzka, who has called it a symptom which may be due to many different morbid conditions having the feature in common that they involve the organ of the mind. And perhaps the most useful description of the condition of which insanity is the symptom is this, that the individual is not mentally in harmony with himself. Dr. Savage says that a man must be considered as sane or insane with reference to himself; that sanity and insanity are to be measured by differences or changes of habit, taste and disposition in the individual, as well as by other symptoms of change in the nervous centers. Dr. Hammond says that so long as the individual peculiarities of mentality are not directly at variance with the average workings of the human mind or with the person's own methods of normal mental action he is sane. If they are at variance he is insane.

So long as we cannot localize the disease itself, so long as scalpel, test-tube, microscope, sphygmograph, ophthalmoscope, or electrical apparatus cannot distinctly

point it out to us, just so long must we study it by results and identify it by comparison, tracing, as far as possible, the relations between mind and matter by what we ourselves feel, and by what we know others feel or have felt. Bearing this in mind, let us consider what must be the mental condition of the mother about to bring forth her child.

We know how closely bodily states are related to mental conditions. We know how brain action is impeded by an overladen stomach, how indigestion can conquer genius. "That the nerves of the abdominl viscera are intimately related to the cerebrun and cerebellum has been experimentally proved ; and as even with n the physiological limits of health, the states of the abdominal viscera have an evident influence upon the frame of mind as a whole, and upon the entrance of certain kinds of ideas, so morbid irritation of the nerves which have their source in these organs will frequently induce morbid states of mind."*

We know how physical pain can incapacitate mind, and while these are not diseased mental states, they are wei ghty facts in the determination of possible brain disease from physical conditions alone.

We know further that probably the most intimate relation of mind and body is that existing between the reproductive organs and the brain. We observe that the age of puberty brings with it peculiar changes to the mind, and the frequently resulting insanity has its peculiar designation. Self-abuse is followed by mental disease. Sexual excess brings similar results, while the entire repression of the sexual appetite is also likely to lead to mental degeneration. Dr. Savage says he has seen several cases of young newly-married people who

* Grie-inger.

were rendered emotionally insane in consequence of a few days sexual orgies. At the other end of life, the climacteric, especially among women, a well recognized intellectual change in common, sometimes taking the direction of increased intellectual activity, and sometimes a hypochondriacal habit of mind.

Charpentier says that there is an undeniable sympathy between uterine disturbances and intellectual disorders. The evidence is overwhelming and we are led to believe that there exists somewhere in the human system some occult sympathy between those organs whose function it is to crowd the stage of life with actors, and that indefinable essence which we call mind, and which abstractly considered would seem to be most distinctly separated from the organs in question.

If then any development or change in these organs or of their functions brings danger to the mind, what danger must not follow when the greatest of all development and change in organ and function takes place in the pregnant woman. This must me more marked in primiparae, to whom infanticide committed by mothers in almost wholly confined. In these the whole current of life, mental and physical, is changed.

Thoughts, feelings, desires and fears, new and strange, crowd upon the young woman, when first she realizes that mysterious fact of life within herself. Then follows that great physical disturbance which must come before the system can accommodate itself to the development of another system within itself. Blood, nutrition, muscular exertion, is called for in new directions; old functions cease and new ones suddenly become active. The mental and physical powers are directed to the new point of interest and the situation assumes an exaggerated importance, in comparison with which all

other mental and physical conditions become of little moment. It needs but a moment of reflection to realize, to some extent, the mental and physical condition of a young woman under these circumstances. It needs but a moment of reflection to realize, to some extent, the powerful influence which such a condition must exert over her. Dr. Lusk has well stated these ideas in the following language :—"When we remember the marked perturbation of the nervous system, in even normal pregnancy, from reflex action, from disorders of the digestion, from the deprivation of the blood, it is not strange that the same conditions which give rise to moral perverseness, to the loss of memory, to hysteria, or hypochondria, should likewise prepare the way for the more pronounced forms of mental derangement. In character the psychical disturbances of child-bearing women do not differ from those that develop under ordinary circumstance, but so active are the causes during the period in question, that of the insane who crowd the public asylums, in one eighth, according to Tuke, the malady is of puerperal origin."

We have now found that there must be a great and actual mental disturbance, even though a normal one, in the child-bearing woman, and recalling for a momont the mercy of the law which in most cases takes into consideration all mental conditions, however slightly different in determining degrees of criminality, is it not time that this mental condition be given its due weight and importance in cases of infanticide, as is "heat of passion," "provocation," and "lack of cooling time" in cases of ordinary homicide.

And now having glanced at the mental states almost inevitably existing under the circumstances which we have in mind, let us consider what mental states we *may* find under like circumstances.

That we shall meet with well marked, clearly defined insanity is beyond question. Just how and when that insanity bears upon the charge of infanticide we shall endeavor to show. And let us first briefly examine the morbid mental conditions accompanying pregnancy. The insanity of pregnancy, childbirth and lactation is treated by most authors under the general term Puerperal Insanity. But we find the cases divided into several classes, as insanity of the early months of pregnancy, which disappears about the fourth month; insanity developing during the later months of pregnancy, which may or may not ter ninate with the pregnancy; puerperal insanity proper, or as it is sometimes termed, the insanity of labor, frenzy of labor, or insanity following parturition, which comes on with labor and may or may not terminate with it; and insanity accompanying lactation.* It is the insanity of labor with which we have to do in this paper.

"We have thus seen," says Dr. Savage, "that the action of pregnancy, parturition and lactation may be simple or compound. They may act immediately, or the result may be postponed for some time"

So powerful is the effect of pregnancy in this direction that it is said many women go through other causes of depression without suffering nervously, and yet become insane with each pregnancy or each delivery.† So delicate is the influence that this phase of insanity occurs only with male pregnancies in some and in others only with female children.‡

The form of insanity exhibiting itself at these periods may be mania, melancholia or dementia.§ It may approach slowly or develop suddenly, as an examination of the instances will show. The maniacal form, as a

*Hammond, 640 †Savage, 69. ‡Id, —. §Id., 67

rule, comes on soonest after delivery. Dr. Savage regards true puerperal insanity as that which follows delivery from a few days to as many weeks. He speaks of a period of delirious excitement which may come on during the second or third day after delivery. "A *mania transitoria* may arise suddenly and pass off as quickly; the patient will have a flushed appearance, with a full pulse, and active, talkative delirium, with hallucinations, in which she may cause damage to herself and to her child. Medico-legally speaking, this condition is of great importance, because during this period of excitement the mother may commit infanticide, and not only be guiltless as far as responsibility is concerned but may not have the smallest recollection of what has taken place."*

We shall now consider the insanity which accompanies labor. Referring again to Dr. Savage we find it stated that insanity may follow parturition, there having been no marked insanity before; that it may be an exaggeration of the emotional state produced by the pains of labor. As insanity might be started by a fit of delirium tremens, so an attack of insanity may be started by labor pains.† Again he says, "With delivery one has frequently seen considerable mental disturbance as a purely natural and physiological circumstance; but beyond this a condition may arise more or less of temporary derangement, the pain of labor starting a condition of mental instability which may become fully developed insanity; and just as on the one hand I referred to a case in which the pain of labor was associated with temporary return of reason, so the nervous shock may, on the other hand, upset the balance.‡

Again there may be a frenzy associated with the birth

*Savage, 371. †Id., 69. ‡Savage, 370.

of a child, which may disturb the mental balance for a longer or shorter period.*

Dr. Sibald says that "attacks of maniacal excitement sometimes occur during actual parturition. They are usually of very short duration and seem to be directly dependent on the intense suffering which may accompany the pains. The most frequent period of their occurrence is when the head of the child is passing the *os internum* or *externum*. It may be caused by weakness induced during parturition, by hemorrhage or exhaustion. It is liable to appear in primiparæ when the subjects are exceptionally young or exceptionally advanced in years. Inordinate mental excitement is liable to bring it on. When any of the causes are superinduced on hereditary insanity or tendency the danger is greatly augmented."†

It is stated by Dr. Clouston that "childbirth, nursing and pregnancy in women are liable to act as the exciting causes of attacks of mental disease. In importance and frequency they stand in the order in which I have p'aced them." Further, "puerperal insanity is technically limited to the mental disease that occurs within the first six weeks after confinement. By far the majority of cases, and by far the most acute and characteristic cases, occur within the first fortnight. It is a very common form of mental disease, for five per cent. of all the cases of insanity among women are puerperal, and I think it is a low estimate that one in every four hundr d labors is followed by it. In one half of the patients the disease begins within the first week after confinement, and in three fourths of them within the first fortnight. The accompaniments of childbirth produce it. The great physiological cataclysm itself, the pains of labor, the ex-

* Savage, 470.

†Dict. of Med. Quain., 729.

citement, mental and bodily, the exhaustion, the loss of blood, the open blood vessels liable to absorb every septic particle, the sudden diversion of the stream of vital energy from the womb to the mammæ, these together, or separately, are the causes that, acting on an unstable brain hereditarily, set up one of the most violent storms that the physician has ever to treat, and it comes on very suddenly in most cases."

It is stated by Balfour Browne that delivery has a better right to be considered as a predisposing cause of mental derangement than pregnancy. He divides puerperal insanity into that which occurs during pregnancy, that which occurs at the period of parturition, and that which occurs during lactation, stating that the greater number of recorded cases fall under the second of these heads, at which period women are peculiarly liable to attacks of insanity.

Griesinger declares that of all the influences which arise from the female sexual system, *pregnancy*, and still more the *puerperal state* and *lactation* are the most important. He says, further, that even during delivery, and from that time during the whole course of the puerperal state, severe mental disorders may arise, the comprehension of which, under the term puerperal insanity, according to the form of the insanity, does not seem to be correct, as they have in regard to symptoms both something altogether distinct from ordinary insanity, and amongst themselves possess many peculiarities in common; still, in relation to the peculiar circumstances of the origin, the term is quite justifiable. In a practical point of view, a minute separation of these cases is always necessary. During the *act of delivery*, there occasionally occur states of great excitement and mania: indeed it has been observed that with each pain there

occurred a violent outbreak of fury. The pain, the very great general nervous excitement, and the violent congestive states, lie at the foundation of these disorders.*

Spitzka says that "occasionally, transitory frenzy is observed, either in dependence on the extreme agony of childbirth, or as a manifestation of the delirium of the parturient state. In this condition, infanticide or suicide, or both, are sometimes committed."

Charpentier states that "sometimes labor does not limit itself to the production of the agitation, anxiety and instability which all accoucheurs have observed, but attacks the intelligence or even leads to the development of maniacal delirium. Thus some women, in real frenzy-seek to inflict violence upon themselves or the child, to abridge their suffering. There is a complete incoherence; patients have no appreciation of their condition. In many cases the intellectual trouble assumes the character of acute mania. It occurs most frequently in difficult labors, but also sometimes in natural ones, when it coincides with the expulsion either of the fœtus or of the placenta. It ceases spontaneously when labor ends, and in the cases where it is prolonged after delivery, it rarely lasts more than a few days."

Verrier says: "A transient mania has been noticed to suddenly appear during labor from the pain. A case is recorded by Cazeaux where, at the moment the pains became expulsive, the woman commenced to sing the overture to 'Lucia di Lammermoor.'"

Dr. Condie recognizes this temporary insanity, but regards it as of very short duration, lasting but a few moments. Dr. Maudsley says "there can be no doubt of the fact that a woman is sometimes attacked with mental alienation during or immediately after delivery, and

*Griesinger 142.

that her child may fall a victim to her frenzy." He distinguishes this form of insanity from that accompanying pregnancy, from that which follows delivery, and from that which appears during lactation. Dr. Hammond divides the puerperal state into three periods, the first beginning with conception and ending when labor begins ; the second beginning with labor and ending with the cessation of the lochial discharge ; the third embracing the time during which the mother nurses the child. He then says that it is during the period of labor "that puerperal insanity is most apt to be developed. It usually occurs during the first two weeks, sometimes during the process of delivery, again a few hours after the birth of the child, or it may be delayed for a month." He further says that it may take the form of acute mania or one of the varieties of melancholia, the former being much more frequent.

Dr. Fordyce Barker, speaking of the "delirium of labor," cites a case coming under his own observation. He says : "The patient, a lady of high culture and remarkable good sense, without the slightest hysterical tendency that I have ever been able to discover, awoke about five in the morning, near the end of her first pregnancy, shrieking : 'I am drowning ? I am drowning !' and jumped from her bed. The nurse, who was sleeping in the hall bedroom adjoining, with the door standing open, and the husband, who occupied the back chamber, rushed in and found her tearing about the room in the most frantic manner, screaming incessantly, without listening to a word said to her. I was immediately summoned, and living very near, was with her in a few moments. I had previously ordered chloroform in anticipation of her labor, but it required the united efforts of her husband, nurse, and the servants in the house to

hold her sufficiently quiet for me to bring her under the influence of the anæsthetic. I overwhelmed her with the chloroform as speedily as possible, and then on making an examination and finding an arm protruding from the vulva, I delivered at once a living child by turning. The after birth speedily followed, the binder was applied, and she was placed in a dry bed before she awoke. * * By my urgent injunction, no allusion to the incident of her first labor has ever been made before the patient, and she has often expressed her surprise to me that her only recollection of it should be that, on awakening, she saw her mother holding a baby."

Again referring to Dr. Savage, he says: "I myself saw a woman with a fully developed child in her bed, the mother having been delivered without any evidence of pain, so that although there were neighbors in the same house, the delivery took place without their knowing it; yet the mother herself said, and I believe truthfully, when I first saw her, that she did not know anything had happened." Dr. Barker further states that in this class of cases moral emotions are a great exciting cause. Social ostracism as a punishment for lapse from virtue adds to the terror of the situation in those whose condition publishes their shame.

This idea is also recognized by many alienists.

Charpentier states that moral causes are beyond question, and act both as predisposing and as exciting causes, particularly the latter; that sudden, violent emotion may immediately precipitate an attack of mania. Rocher, Berard, Esquirol and Weil recognize the same influence. Esquirol estimated the relation of moral to physical causes as four to one; Weil as twelve to six. This last consideration becomes especially important in cases of infanticide following seduction, or the birth of

an illegitimate child. The situation under such circumstances must assume an importance in the mind of most females almost, if not wholly, impossible to imagine. Dr. Clouston declares that the shame and mental distress usually attending the birth of illegitimate children make it twice as common then as after the birth of legitimate children. Dr. Spitzka also speaks of the greater frequency of this condition in the mothers of illegitimate children than in others.

Indeed, it can hardly be necessary to quote authority for such a conclusion, after becoming familiar with this phase of insanity.

Without further inquiry as to scientific opinion, let us glance at the conclusions which we may safely rest upon after the examination which we have already, though briefly, given our subject.

First. There is an undeniably close relation between the sexual organs and the mind.

Second. During the period of pregnancy there is great physical disturbance, which may and in many cases does disturb the mind, and cause well-marked insanity.

Third. This mental disturbance may appear at or just after labor.

Fourth. Moral causes greatly increase the danger; hence, in mothers of illegitimate children, we may expect its occurrence.

To resume, it is generally agreed that the peculiar symptom of this phase of insanity is that of aversion to the child. Dr. Hammond states that the first peculiarity of this form of insanity "is such a change in the natural instincts of the mother as to cause her to acquire a feeling of the most determined aversion to the child of which she had just been delivered"

He cites a case which Esquirol, in pointing out that

the murderous tendencies of the puerperal maniac are not due to a desire which might exist of concealing the birth of a child, from shame or other motive, refers to where a young woman, who, being pregnant, made no secret of the fact, but got ready for her labor and prepared the clothes for the child. The evening before her confinement she appeared in public. During the night she was delivered. The following morning she was found in her bed, but the infant was found in the water closet mutilated with twenty-one incisions and punctures from some sharp instrument—probably a pair of scissors Shortly afterwards she was arrested and carried on a stretcher a distance of two leagues from the house in which she was confined. During the journey, she talked deliriously, and appeared not to know for what she was arrested. Several days subsequently she acknowledged her crime but refused to eat.

He mentions several other instances coming under his own observation where violence has been attempted by mothers upon their children, saying that in every case the patient has exhibited an active aversion to the infant, or a passive indifference wholly at variance with the maternal instinct.

Dr. Savage says "with puerperal insanity there is commonly a dislike to both husband and child; there being in one case a nervous irritability which prompts the mother to get rid of the crying child which disturbs her rest; or, on the other hand, she may not believe the child is hers at all, or she may think its birth has alienated her husband's affections. * * * She may have some delusion, fancying that the child will be starved, or that it is already suffering from serious ailment, or she may kill it simply to send it direct out of this world into a happier state * * * A *mania transitoria* may

arise suddenly and pass off as quickly, * * * in which she may cause damage to her child. * * * Medico-legally speaking this condition is of great importance, because during this period of excitement the mother may commit infanticide, and not only be guiltless, as far as responsibility is concerned, but may not have the smallest recollection of what has taken place. * * * In all these cases, the murderous act may be done without premeditation, and with little or no recollection of what has happened."

Dr. Barker says that a sudden aversion is displayed towards those who have been before best loved. Charpentier that there may be excitement with ideas of murder and hallucinations or paroxysms of furious mania.

We are now prepared to form another conclusion which is:

Fifth. That mental disturbance in these cases is likely to result in infanticide.

Again we say, that scientific opinion is only necessary to *confirm*, and not to form, these conclusions. Daily observation shows us this intimate relation between mind and body; wider observation and more information show us that this relation exists most intimately between the organs of generation and the organs of the mind; hence the necessary conclusion that in this great *physical* change and disturbance there must be *mental* change and disturbance, and that physical disturbance arising in the locality most intimately connected with the mind, the mental disturbance must be proportionately great, especially when exaggerated by emotional and moral causes.

In the light of the foregoing discussion, what have we but at least the probability that in cases of infanti-

cide by mothers at this period, the act is the result of an insane mind. If insanity is evidenced by lack of harmony with the patient's self, if she is to be considered sane or insane with reference to herself, if her sanity or insanity is to be measured by differences or changes of habit, taste and disposition, if it is to be determined by inquiring if the individual peculiarities of mentality are directly at variance with the average workings of the human mind, or with her own normal methods of mental action, then, indeed, we shall have no foreboding of error in our conclusions. For what can be more at variance with the certain instincts and disposition of a mother, or with the average workings of the human mind, than the act of infanticide.

Dr. Savage has well expressed the idea in saying that "the law, rightly, in this particular, looks upon the *crime itself* as sufficient evidence of the insanity; that a loving mother should destroy her offspring is unnatural and unreasonable, and ought not to be considered as an act for which she can be held responsible."

While it might be claimed, still it is not the argument here, that there *can* be no such thing as premeditated infanticide by a mother, but that the *improbability* of the crime, the situation and condition of the mother, the *great probability* of mental disturbance, and all the conditions discussed, should call for the utmost caution and the greatest hesitation before arriving at the conclusion of criminality, and especially so when the only evidence of the crime is the concealment of the birth or the discovery of the dead body of the child, even with marks of violence upon it.

It is, therefore, the desire of the writer that this paper may, perhaps, accomplish something in the direction of more careful investigation in this class of cases, and

more ready appreciation of the fearful crisis which precedes infanticide, and, to those whose attention has not been particularly called to this class of cases, a clearer understanding of the mental condition that in most, if not all cases, makes such an act possible.

BELGIUM AND HER INSANE INSTITUTIONS *

By Clark Bell, Esq.
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Belgium is a country usually spoken of as the most densely populated of any portion of the globe, unless some portions of Java be excepted (which are rarely alluded to by the statistician).

A country about the size of the State of New Jersey, in the United States of America, having an area of 11,373 square miles, or 7,278,968 acres of land, and in 1880 a population of 481 souls to the square mile. She is the sixteenth of the European States in area, being only about one-eighth the size of Great Britain, and the eighth in population. She has had a very eventful political history, but the Belgium of to-day is the creation of our present century, and is probably one of the freest, and best governed of the limited monarchies of the world. The Belgians differ from any other people I have ever visited in this : that they seem as a nation to be entirely satisfied and contented with their lot. There is little or no emigration to the United States, or to any portion of the world from Belgium. They are a thoroughly careful, economical, industrious, prudent and thrifty people, and perfectly contented with their homes and their country. While we meet occasionally in the great cities of the world, London, Paris, New York, Berlin and other great centers, a

* Read May 8, 1889 before the Medico-Legal Society. This paper received honorable mention from the Committee of Award of the Medical-Legal Society among the prize essays of 1888.

few enterprising Belgians, in trade and commerce, it is very seldom we come in contact with them in any capacity whatever outside of their own country, and we must needs study them at home.

Belgium is a level country, very much like Holland, especially that portion lying on the northeastern border, but it is more hilly, in that region upon the confines of France. It had over five million and a half people in 1880, to be exact, 5,519,844.

It has a million more people than all the New England States combined, although it is smaller in area, than any of the United States, except Rhode Island. It has nine provinces—Antwerp, Flanders, Hainault, Nameur, Luxembourg, Liege, Limburg, and Brabant. The principal rivers are the Schelde, the Meuse and the Yzer, all navigable, the former 108 miles, the Yzer 115 miles, and the latter 26 miles. The North Sea washes its northwestern coast, and while it is only 174 miles from Ostende, the northernmost city, to Arlon in the extreme southwest, its greater frontier line adjoining France, is 384 miles and its greatest breadth if from north to south 105 miles.

I have passed over Belguim twice—always in the season of the harvest—(July and August). It is a country that is cultivated beyond, and higher, than the average of the European States—for example, in England, where farms are cultivated to a much higher degree than with us—Lincolnshire for instance, I have known land to rent for $12.50 per acre. In Belgium farms rent for $22.00 per acre. The average rental of English farms is from $6.00 to 9.00 per acre. That of Belgium farms is from $15.00 to $22.00. The Belgian farmer frequently expends $6.00 to $9.00 an acre in manures. The average price of the Belgian farm lands is about $400 per acre, but

farms run as high in price there as seventeen-hundred, and two thousand dollars per acre. The cultivation of the Belgium farms greatly excels, and their lands sometimes double in products, the English farms. The great Belgian product is rye. We see enormous quantities, growing in the fields, and it is largely eaten by the people. The farms of Belgium are almost all small, extending back a long distance from the highways in narrow strips, without fences. Many farms in Belgium are not wider than fifty to one-hundred feet: they are all in small divisions, and often extend long distances, very narrow in width. Upon this portion or strip of land, one part is cultivated to one crop, and another to another; the work is done almost wholly by the women, excepting ploughing and gathering some portions of the grain.

Of the 6,582,120 acres of cultivated land there are 744,000 farms, or an average of less than nine acres to a farm. One quarter of all Belgium's population is devoted to agriculture, and of every one hundred workers on farms, sixty-one are women. Of these farms, only 80 per cent. exceeds 8 acres in extent; 71½ per cent. do not exceed 25 acres; 36 per cent. do not exceed 13 acres and 56 per cent. do not sxceed 2½ acres.

Let me describe the Belgian farm-house to show how we must judge Belgium regarding its methods of treatment of the insane. Belgian farm-houses are usually one and a half stories in height. Imagine a long house, cut off a room at one end, the place where the family live, and take their meals, with one spare room at extreme end: the middle room is the kitchen with its fire-place, 10 or 15 feet wide. In this fire-place swings an enormous crane, and hanging upon this a kettle, with a capacity of one, two or three bar-

rels, depending upon the standing and responsibility of the family. In most houses a little railway, on the ceiling above, is operated by a chain, running down to this kettle, so that the housewife can run the kettle like a car around through the door, entering the part of the farm-house where the animals are kept, in the same house and underneath the same roof. On one side are the cows (and sheep if they are able to keep them), and on the other side are the swine (no horses), these are kept elsewhere and are usually attended to by the men. This large kettle is used for cooking the food which the animals consume. They are kept in their stalls. The people live without exception, even the Mayor of the towns, in this way, and in most cases. the animals are under the same roof where the family sleep, under the care and charge of the women, and this universal condition of family farm life, must enter into the subject of which I am to treat, to judge of it properly.

The women of Belgium, are, as a rule, healthy, happy and contented. They do not seem to be subject to the diseases, and especially those weakenesses which affect the women in America. Whether this is due to the laborious life they lead, especially their out-door work, in the field upon the farm, others may answer, but it is an undoubted fact. All the work of taking care of the animals (excepting taking care of the horses) is done by the women. The planting and principal cultivation of the crops, is also largely done by the women. Such a thing as a mowing machine, or a reaper is rarely to be seen in Belgium, or indeed any of the improved modern agricultural implements, in universal use with us. The reason is obvious. It would not pay the Belgian farmer to buy a reaper for the cutting of so little grain, as he raises, and on so small a piece of ground as he cultivates.

The rye is cut very close to the ground, with an implement different from anything I ever saw used at home. The article of pork, the famous Westphalian hams, are sold here for two francs per pound, and cannot be bought cheaper. A fine hog brings $40 to $50; pork is the most expensive of all meats; beef costs a little over a franc a pound. This enormous population, which is more than one quarter farmers, raises the food which the people of the whole country eat, and the Belgian peasant rarely eats meat, except on fete days and holidays.

The government of Belgium is a limited monarchy, where the people elect both houses of the legislature, the Senate and House of Representatives, and no law can be enacted unless the bill is signed by the Minister of State. The people of Belgium rule that country as substantially and completely, as do the people of Great Britian and more than those of Germany. The Belgian laws are carefully prepared, kept and enforced, and it would be impossible to infringe upon the rights of the people; their position is too secure.

There are nine political divisions or subdivisions, which have each a separate government and a separate and distinct set of officials, who govern in all local affairs, including eleemosynary institutions and insane asylums, which are under the direct supervision and management of the general government at Brussels.

Belgium has more miles of railroad probably than any other country in proportion to its size. Almost all these railroads have been built and are owned by the Government. I think their system of railroads the best in the world; and I will explain why. In the first place there are three kinds of trains, the first, second and third class, with prices regulated by the Government accordingly.

There is no such thing as a high price; if you should take a first class train on the most expensive lines, it would still be very cheap, as compared with other countries.

There is a system of trains also divided into first, second and third class, that go at slow speed, about 20 or 25 miles an hour, at about half the price of trains going at higher rates of speed; there is still another faster series, were the price is about one-third higher, called the express. While they have the continental system of passenger cars, there is frequently an arrangement by which you can pass through the cars in motion, and where they are not shut off from the others, as in England and France. The post office and telegraph is also managed by the Government in Belgium. If there is one thing studied more than another, in all departments, it is the economy of the management, its practicbility and cost; everything is submitted to, and governed by that test.

THE INSANE.

The care of the insane is a growth, of the work as done by institutions, founded in early times, on religious principles. As we think of them now and criticise them, we must consider this, and regard them from that standpoint. The present government took hold of these institutions, not, perhaps, as they would now make them, but as they found them, and upon this as a starting point built the present system of asylums and colony management of the insane as it to-day exists in Belgium.

In this population of five million and a half of souls, there are at present about ten thousand insane people; which is not very far from the proportion of the insane in the United States. The best statistics

I have seen, are based upon the census of 1880, which would put the insane of the United States of America at 91,997, of which 40,942 were in asylums, excluding idiots. They are not classed under our system as insane, but as our defective population, with the blind, deaf and dumb, into four distinct classes by our census. There is probably over sixty millions population in the United States at this moment, and within our borders, 100,000 insane if calculated by the law of probabilities, that has hitherto held in the increase in our population, and the relation the insane bear to it, so that the relative proportion of the insane in the two countries, Belgium and the United States, is very much alike, but there is a very great difference in their condition.

Now, while I say that the Belgian people are contented with their own country, it cannot be said of Americans that they are contented. We do not care to live in the same house and village where our grandfather and grandmother lived; we are more nervous, more ambitious, more aggressive, nomadic, restless and agitated than the Belgians, and that may have its influence on the insane—there in the one direction—and here in the other. The insane institutions of Belgium may be divided into two classes, the public and the private. Of the former, that at TOURNAI; that at AVERRE, near BRUSSELLS, under DR. VAN VAUF; the HOSPICE GUISLAIN AT GHENT; for females, at MONS; the Asylums at ERPIDMONT; at COURTNAI, and that most noted of the latter and private asylums, that of SHAERBECK, near BRUSSELS; that of RICKEL, near BRUSSELS; ST. JULIEN INSTITUTE at BRUGES and ST. MICHAELS; ST. DOMINQUE at BRUGES; the two women's hospitals at Ghent and a similar one for males—a notable one—which with others making in all forty institutions for the insane, upon the

authority of the official report of 1881. I will speak first of the most celebrated of these two institutions, the HOSPICE GUISLAIN. In the first half of the present century, when men all over the continent of Europe beg in to think of what could be done for ameliorating the condition of the insane, while the elder TUKE and CONNOLY in ENGLAND and PINEL in FRANCE were doing what they could there, for these unfortunates, there was a man in BELGIUM of gseat character and breadth of view, with a grand soul a lofty and humane spirit—JOSEPH GUISLAIN, who was at the head of this HOSPICE GUISLAIN at GHENT. He did for Belgium what PINEL did for France, what the elder TUKE and CONNOLY did for England, and he laid the foundation for this hospital, on the new basis o · theory upon which the insane were to be treated--by the law of kindness and love, and not by the system of blows, or brutality or driving, or punishment or force. Last year a statue was erected to his memory in the city of GHENT (1887), to which men of almost every nationality contributed, and to which the BELGIAN Government gave a little; the cost made up from many sources. The MEDICO-LEGAL SOCIETY of New York sent twenty francs, and individuals from all over the world sent twenty francs and more; and in July, 1888, in the city of GHENT, a statue was dedicated to the memory of that marvellously good and humane man, who led the movement for ameliorating the condition of the insane of his country, and who placed the practical work on a nobler basis, on a higher status than it had hitherto been.

I particula· ize what impressed me, as the result of my observations, of the means which have contributed to bring about these results in that country.

i have sai l that the care of the insane had been origin-

ally given altogether to the religious organizations. BELGIUM is different from all other countries in the world in that respect; there are no religious organizations in Belgium but Roman Catholics; there are only 15,000 Protestants and 3,000 Jews; the whole country is Roman Catholic or almost entirely so. The Romish Church has been, and in some respects is now the custodian, and in its hands are placed the destiny of the insane of that kingdom. At the HOSPICE GUISLAIN, and at TOURNAI, which is the largest and most costly of all the insane asylums, the same system prevails.

At the Hospice at TOURNAI, Dr. Lentz, an eminent alienist of that country, is in charge as Medical Superintendent.

His brother is chairman of the Lunacy Committe of the Belgian Government just formed, and attached to the Attorney General's office at Brussels. The houses are built in the most approved method, and in the most complete and elaborate manner of any institution in the kingdom. The Belgians of Flemish descent speak frequently Flemish, French and English; those in the Northeast speak Flemish, and others living South speak French. Dr. Lentz was one of the latter. I found he was unable to speak English, but I found an interpreter in his institution in Brother Rudolphe.

There is a religious order of brothers called the Brothers of ST. VINCENT DE PAUL, a Roman Catholic Society of Brotherhood, who have taken the vows of chastity, poverty and obedience. They form an organization which is very strong, powerful and wealthy. At TOURNAI, where I first stopped, Dr. Lentz told me frankly their relation to the BELGIUM INSANE ASYLUMS. I was introduced to the Brother Superior at TOURNAI, and to the leading members of the order. These brothers

make a contract with the BELGIAN Government, by which they agree to take the whole care, charge and maintenance of the insane, in every respect except medical supervision and attendance. Our physicians will be surprised at this, but it is a fact. DR. LENTZ has very little, almost nothing to do, with the administration of the asylum; he is simply a medical man, who takes care of the sick, the Medical Superintendent, but the clothing, the food, the care, in every other particular relating to the insane is done by these brothers. When I found this out, I thought best to study the brothers and their management. So I stopped with them, lived with them, ate at their tables and slept in their rooms. Each of these men acts in some capacity; for instance, one of them is cook, one of them has charge of the farm, superintending the grain, crops, etc. They have lands which they work, and work them just as carefully and thoroughly as any farm is worked in Belgium. They kiil their own cattle, they buy nothing from butchers, and they do nearly all their own work of all kinds.

The price the government pays for the taking care of the insane is 96 centimes, not quite one franc per day. The Belgians pay not quite 20 cents per day our money for the care and maintenance of their insane per capitum, exclusive of the expense of the buildings and the salary of the Superintendent. Neither DR. LENTZ at Tournai, nor DR. MOREL at Ghent had any assistant physician, in these splendid establishments, and the salaries were not one quarter what they should be, or like salaries are, in ENGLAND, FRANCE or the UNITED STATES. The patients have good care, have all they want to eat, and are well cared for. Such a thing as abuse of, or cruelty to the the insane, such offences as we have been investigating in New York city (1888), could not be possible in BELGIUM.

There are no hired attendants; these Christian men devote their lives to this splendid work. I saw a brother nearly ninety years old at the HOSPICE GUISLAIN at GHENT, who had from his childhood been in that service. He was the friend, companion and co worker of GUISLAIN; he had worked with DR. B. C INGELS, and won and wore, the decoration of the Legion of Honor on his coarse black gown.

They employ help only in some of the heavy drudgery of the institutions. All the mechanical work is done here in the Hospice. One of the Brothers was at the head of the carpenter's shop; he was an adept, and could do very fine work; all the patients, who had done that work were placed there, and some that had no trade; all repairing was done there. There was another Brother who was a tailor; another had charge of the floral department. I will say that in no part of the world that I have visited, is there such splendid attention given to flowers and floral effects, and to the gardens, as here. Profusion of flowers abound in the beautiful corridors, built of marble, glass and iron, all cared for by the brothers propagated and grown on the place, so instead of the wards being white, blank and disagreeable, as many of our own are, they were home-like, bright and pleasant, and glorified with beautiful color. Off the wards were gardens enlivened by foliage of plants, shrubs and flowers, and wild fowl of various kinds, which are sometimes considered untamable, were here breeding; wild quail, and partridge with their young. I do not think they were tame, but there was some system of cutting the bones of their wings, so that they could not fly, and these gardens were accessible to the patients during the day. I saw only one man under restraint at TOURNAI. I went into a ward in company with

Dr. Lentz, I saw this man with a strap over his hands. I said to the brother, "Why do you have that man's hands strapped?" "He is inclined to be violent," he replied. "What will he do?" I asked. "He might do some damage," was the reply. "Please take off the strap, and see what he will do I said, we are all here, you are not afraid of him, and I certainly am not afraid of that little fellow." "Take off the straps and see what the effect will be." When the straps were taken off he looked dazed, hesitated, looked around at the brothers and at us, but was pleased and delighted. There was no apparent reason for his restraint, or rather no good reason. It simply saved trouble in looking after him. Two brothers were in each ward and in charge.

THE HOSPICE GUISLAN.

At the head of that asylum is Dr. JULES MOREL, a most charming man, as Medical Superintendent. He had invited me to dinner and had invited people from Brussels to meet me, besides his wife and some relatives. I was introduced to the Brother Superior there, Brother HILDOUARD, whom I found could speak English very well. Through him I learned more than I could in any other possible way about the relations of the Brothers to the Insane Asylums of Belgium.

HOSPICE GUISLAN is one of the oldest of the asylums of Belgium. It is like a home or great family; nothing dismal, plenty of light, plenty of air, and such a look as one likes to see. The walls are pierced both ways with apertures so that the patients could look out into the fields; everywhere GUISLAIN had opened these look-outs through the walls. High walls surround the place, as also at TOURNAI. The whole feeling of the place is free, nice, warm and cheerful. Dr. MOREL was in very

fine relation with the patients. They all seemed to regard him as their best friend. It is a very common thing in asylums in this country, for patients to have the idea that the doctor is an enemy. The doctors in this country frequently find that the patients have a great personal antipathy to them. Dr. Morel seemed to have the most perfect confidence of his patients, whom he could control and handle like so many children. Whether it is the idea of obedience, natural to the people of that country, or whether it is different in this country, because we must know the reason for everything, I do not know ; but in this asylum his word seems to be the law, and the feeling was very different from what we observe so frequently at home in our asylums.

I examined the cuisine, and into the arrangements for the care of the insane, and I fully believe that the Belgian insane are well fed, clothed and cared for ; that they suffer in no way by deprivation from all they ought to have, their food is well cooked and well selected —little of it bought—and a system of gentleness and kindness is maintained in the discipline, care and management. I, who am a Protestant, and not a Catholic, and with little sympathy for their religious views or belief, desire to express the greatest admiration for these Brothers, who devote their lives to this peculiar and beneficient work, and I should be glad if we could imitate such attendance in our American Institutions.

GHEEL.

In the first place, Gheel is a district about twelve miles long, of irregular, triangular shape and width, containing a population of about 11,000 people. That colony has existed for probably more than a thousand years ; we don't know exactly when it was planted. Tradition

tells us that the colony was founded about the year 600 A.D., from an incident which occurred at the death of ST. DYMPHNA; all are familiar with this tradition—it came to be believed that contact with her relics would cure the insane. The belief arose about a thousand years ago, and they have built a church there and have her bones preserved as relics.

GHEEL became the MECCA towards which men for many centuries sent their demented for relief, and where they have found it in thousands of well authenticated cases. Families lived around this church who make application for the care of the insane, and to them applications have been made from all over the world for centuries. These people have been reared for a thousand years, from father to son, from mother to daughter, trained by long inheritance to take care of the insane, just as a farmer teaches a son to take care of a farm, or as the watchmakers of SWITZERLAND have preserved their art in their families. There are about 5,000 inhabitants in the village of GHEEL, the centre of the colony. No business is done here, no industry of any kind, unless drinking rum is a business. I do not think rum drinking is a specialty at GHEEL. It is a peculiarly popular thing in Belgium universally. If GHEEL escaped, it would be a marvel, if not a miracle, but we must not condemn GHEEL or its system for its rum drinking, which is universal in BELGIUM.

Almost every family that has a home takes charge of these insane people, and they take one, two and three patients and have the whole charge of them—the whole responsibility. They feed them, clothe them, see that that they get up in the morning and go to bed at night. If they require special care they furnish it; they live simple lives, in the same simple house at Gheel as the

peasant lives in, the same farm house and farm life of Belgium, they live just as the Belgians live. This is not done without medical supervision, and of the best kind.

There is an asylum at Gheel, where there is a superintendent who also has charge of the whole colony. Patients first go into this hospice or asylum, which is under the charge of Dr. Peeters. They are under the observation of the medical superintendent and local board, who, when occasion offers, transfer them into the house of A, B, and C, where they remain as patients, and members of the colony. There are three different prices paid for the patients—eight, nine and twelve cents per day. Twelve cents, English money, is paid for those called the dirty patients, those who are the most troublesome, and who can not take care of themselves. The Government recognizes this by paying the highest price for them. The highest price paid for private patients is $200 per year. There were 1,800 people in that colony in 1865, and since that there has been 1,600 to 1,800 at a time. Living is very cheap. Everything is on the style of the life of the peasant ; what the peasant does the patient helps to do, and the peasant takes his patient with him, if able to work through the day. The Belgian works often in the night over hours. You see in these great pictures of Millais, women coming home in the evening, or going out to work before the day breaks. Dr. Peeters complained of this to the Government—that the people and the insane often were working too many hours ; he said it was impossible to regulate this ; the Belgian people will work in this way. But is it any worse for the insane than for the people ? I quite agree with the Belgians as to the beneficence and utility of Gheel. All Belgians speak in the highest terms of this colony and in praise of this system, and I believe and concur with them fully.

I never conversed with an alienist in Belgium who had any doubts of the good results of the colony at Gheel. The reason Dr. Tucker found such fault was that he visited the place in December ; it was raining and freezing ; the streets of a country village are not made the same as in great cities. There was a great deal of rain there, and he said he saw the insane crouching around their miserable fires, which any one would do under similar circumstances. But I think the insane there are just as happy and are as well cared for, fed and clad as are the people of Belgium of the same class. I pursuaded Brother Hildouard to accompany me on my visit to GHEEL and I am under great obligations to him for showing me much of the work there, that without him I could not have seen or at all understood.

The Belgians are a well-to-do people who live frugally, and who live as the Holland Dutch formerly did, from whom our most aristocratic New York City families come. The grandmothers of our Knickerbocker aristocrats took care of the kettle, fed the pigs and cows, precisely as the women of the Netherlands do now, and this is how they get their peculiar appearance, which characterizes physically the Knickerbocker Dutch here, who are of the same type in our city, as in Belgium, and look exactly like their New York descendants in many respects.

We have in the State of New York six large State institutions for the insane—Utica, Auburn, Middletown, Willard, Binghampton and Buffalo. Recently the question came up of building another asylum in the North, and it takes a million of dollars to do this. We have only our proportion of population, five millions and a half. What is the use of building so many asylums, with the example of this colony at Gheel before us? And why should we not consider how many of our insane could be trans-

ferred into families, upon farms, where they can have out door exercise, labor, and occupation combined with it ?

I asked Dr. Blumer, the present superintendent at Utica, what proportion of his patients could be so placed without danger to others or themselves ; he said about 70 per cent. of his patients could be so removed with safety, so far as any probable damage would be done to themselves or others. I think he was correct, and I think other American superintendents, if questioned, would give similar answers. Massachusetts has passed laws allowing the experiment to be made in that State, authorizing the authorities to place insane in families who would take care of them under proper supervision for a fixed price. If people are willing to take them, let them have them. I would not think of putting an insane person with a farmer, or with any one without medical supervision.

There is a feeling among the insane, confined in asylums, which stands in the way of recovery ; that feeling which a man has, that he cannot get beyond a certain boundary line—that he is a prisoner. He hears the rattle of keys and clang of bolts and bars ; this agitates and excites him, and retards recovery.

I believe there has been only one case of crime by the insane in Gheel in 11 years, only three or four illigitimate births, and only one case ascribable to a lunatic ; there has been only one offence against the public peace in 10 years, and there has been no crime among them anything like the percentage of crime in the United States. These things ought to be regarded. We should consider them. Ought we not to make the experiment, even if we have asylums ? Take for instance, the case of a harmless, demented old lady, afflicted in a certain way, chronic, incurable, but harmless, why keep her in

an asylum, if she could be made happy and comfortable on a farm at less expense?

The relation of the religious orders to the insane in Belgium is peculiar and phenomenal. In 1886, the latest statistics accessible to me, there was a great number of religious houses in Belgium whose inmates spend their lives in pious work. In that year there were in Belgium, 178 of these houses for males, and 8,144 for females. The population of the former was then 2,991, and the latter 15,205. In many of the Belgium asylums these women have the insane in charge.

I find it very difficult to give an estimate of the actual number of the insane in Belgium and their disposition at this time. The latest official reports of Belgium furnished me by Dr. Lentz, Director-General of the Department of Justice, and now Inspector of Insane Asylums of Belgium, whom I met in Brussels in 1887, were published in 1881, and were to 1880.

The Bulletin of the Society of Mental Medecine of Belgium for 1886 (3 fasicule No. 42, pp. 104 and 105), furnish a tabular statement which I append as doubtless reliable at that time:

INSANE ASYLUMS OF BELGIUM (1885)

Names of Asylums.	Locations.	Names of Directors.	Names of Directors.	Medical Superintendents.	Visiting Committee.	Population.			
						Board's.		Poor.	
						Males.	Females.	Males.	Females.
Hospices des Alienees	Antwerp	Van Genetlen		Berchem				98	30
" " Freres Cellites	Bouchot	Van Thielen		Van Hoof	Kums	90			
Establishment d'Alienees	Duffel		De Ridder	Temmeman			80		
" des Freres Cellites	Malines	Thomassen		Stobbaerts		30			
Insane Colony	Gheel	Exsteen		Peeters. Med. Inspectsr. Aerts. Huypens.	Sottians. Cuisenain.	175	125	800	900
		Sec-rec.							
" "	Lierneux	Hakin		Pisonel (Med. Dept.)					
Establishment (Hospices St. Jean)	Brussels	Mascart		Desmuth, J.				15	15
" des Alienees	Uccle	Rynenbreck		Goffin		75	60		
" " "	Evere	Van Hove		Cuylits	Vandenven	30	34	97	94
" " "	Schaerbeck	Maeck-Mertens		Tournai	Hanwert	18	20		
" " "	Louvain	De Marsin		Masoin		40		30	
" " "	"		De Smit	"			40		30
" " "	Diest	Kenens		Moureau		40			
" " "	"		Dingenen	"			40		
" " "	Tirlemont	Lukermans				75		21	
" " "	Erbes-Quebs		De Vestel	Vrebos	Vrebos fils		120		280
" St. Dominique	Bruges	Soleil		Valcke	Saeys			240	180
" St. Julien	"	Houtave		Vanden Aberle	Moelaest	25	25	420	405
" des Alienees	Menin		Lienart	Lefebvre	Clayessens (chir)		95		
" " "	Ypres	Casier		Cornette	Poupart	6	4	61	66
" du Strop	Gand	Hondeghem		Vermeulen		90			
" Rue d'Assant	"		De Ro	"	Morel		90		
" " Court R. d la Vioelette	"		De Lil	"	"				270

INSANE ASYLUMS OF BELGIUM (1885.)—*Continued.*

Names of Asylums.	Location.	Names of Directors.	Names of Directors.	Medical Superintendents.	Visiting Committee.	Population.			
						Board's		Poor.	
						Males.	Females.	Males.	Females.
Hospice Guislain	Gand	Van Langendork	.....	.....	.....	...	...	480	...
Establishment Freres St. Jean de Dieu	"	.....	.....	De Moerloose	.....	14	....	...	....
" des Alienees	St. Anulez	.....	.....	De Craene	.....	.....	...	400	....
" " "	Courtrai	Baelen	.....	Mabilde	.....	60	60	150	300
" " "	Seczate	Van Vyncht	.....	.....	.....	.....	....	400	....
" " "	St. Nicolas	Vanden Brent	.....	Authennis	.....	25	...	60	....
" " "	" "	.....	Klaes	"	.....	....	60	....	90
" " "	Lede	.....	Peeters	Wibo	.....	....	60	...	60
" " "	Velseque / Rudewarde	.....	Beerens	Droesbeque	.....	....	50	....	5
" " "	Tournai	.....	Sebrechts	Duhem	.....	....	10	....	45
" " "	Wez-Velvain	.....	De Coster	"	.....	....	32	...	....
" " "	Chievres	.....	Paey	Leclercq	.....	....	10	...	....
" " a de l'Etal	Tournai	.....	.....	Dentz, Med. Dir	Chanty & Dochet	74	....	435	....
" " " "	Mons	.....	.....	Semal, " "	Ranler	.	94	....	405
" " " (males)	Liege	Pres. des Hospice	.....	Closset	Decocket / Dehasque	20	....	140	...
Asite St. Agathe	"	.....	.....	Anten	Dehasque	.....	.....	....	100
" des Alienees	Glain	Candeze	.....	"	.....	70	40	....	....
" " "	Henri-Chapelle	Houben	.....	Henfling	.....	30	....	....	....
Establishment des Alienees	St. Trond	Vanduthaeghen	.....	De Bruyn	Gombault	100	350	....	....
" " " "	" "	.....	Grosse	" "	"	....	50	....	200

This table was made by M. Oudert, late General Superintendent of the State Institution of Belgium for 1885.

Dr. Peeters Medical Superintendent of the Colony and Asylum at Gheel, published in the same journal (No. 41, 2 fasicule pp. 18, *et seq.*), the population of that colony for 1884 and 1885 as follows:

December 31, 1884, number of insane, 1727
" 31, 1885, " " " 1581,

having sent some in the latter year to the new colony at Liernieux—and to other institutions—and made the following general summary for December 31, 1885, at GHEEL:

	MEN.	WOMEN.		MEN.	WOMEN.
Boarders....	95	46	Curable.....	12	20
Poor.....	684	755	Incurables...	7 8	781
	780	801		780	801

1. The insane in the United States, based in compilations from the tenth census showing the ratio, and per cent. of each State and Territory to population:

2. Total insane in the United States in 1880:

In asylums.....40,942
Out of asylums.....51,055

Total.....91,977 excluding idiots.

GENERAL RATIO.

Male, 17 per cent.
Female, 19 per cent.
Colored, 9 per cent.

White, 19 per cent.
Native, 15 per cent.
Foreign, 39 per cent.
Total, 18 per cent.

Also the insane in United States, based on the tenth census, in the ratio to population.

RANK.	STATE.	PER CENT.
1	District of Columbia	52
2	Vermont	30
3	New Hampshire	30
4	California	28
5	Massachusetts	28
6	New York	27
7	Connecticut	27
8	Rhode Island	24
9	Maine	23
10	Ohio	22
11	Oregon	21
12	New Jersey	21

RANK.	STATE.	PER CENT.
13	Missouri	19
14	Pennsylvania	19
15	Wisconsin	19
16	Washington	17
17	Indiana	17
18	Michigan	17
19	Kentucky	16
20	Illinois	16
21	Virginia	15
22	West Virginia	15
23m	Iowa	15
24	Missouri	15
25	Tennessee	15
26	Montana	15
27	Minnesota	14
28	North Carolina	14
29	Delaware	13
30	New Mexico	12
31	Alabama	12
32	South Carolina	11
33	Georgia	11
34	Louisiania	10
35	Utah	10
36	Mississippi	10
37	Kansas	10
38	Nebraska	9
39	Arkansas	9
40	Texas	9
41	Florida	9
42	Dakota	5
43	Arizona	5
44	Colorado	5
45	Nebraska	4
46	Idaho	4
47	Wyoming	1

Total insane in United States	91,997
In asylums	40,942
Out of asylums	51,055

1880

Insane	91,977
Idiotic	76,895
Blind	48,928
Deaf Mutes	33,878
	251,698

NOTE.—I wrote to Dr. Jules Morel for later data, who was unable to send me official reports, which he expected next year (1889), from 1880 to 1886. If published I have not seen them.

In compliance with my request, Dr. Jules Morel sent me the following table under date of August 12, 1883, which may prove of interest.

TABLE OF INSANE ASYLUMS OF BELGIUM, COMPILED BY DR. JULES MOREL, MEDICAL SUPERINTENDENT OF HOSPICE GUISLAIN, AT GHENT, AUGUST 12th, 1888.

Lunatic Asylums, Location.	Superintend'ts.	Inmates.				Public or Private.
		Boarders		Poor.		
		Male.	Female.	Male.	Female.	
Hospice Guislain, Ghent.	Dr. Morel	20	....	474	...	Public.
Rue Court des Violettes, "	Dr. Vermeulen ...	...	....	....	270	Public.
Rue d'Oessant, Ghent....	Dr. Vermeulen ...	....	90	....	....	Private.
" Le Strop "	Dr. Vermeulen ...	90	....	....	....	Private.
St. Jean de Dieu, "	Dr. De Moerlone..	14	....	....	...	Private.
Asylum at Courtrai.....	Dr. De Craene ...	60	60	150	300	Public.
Selzate.....	Dr. Mabilde.....	....	....	400	....	Public.
St. Nicolos. ..	Dr. Authennis....	....	60	....	90	Public.
" "	Dr. Authennis....	25	....	60	....	Public.
St. Lede.....	Dr. Wibo.....	....	60	....	60	Public.
Velscque.....	Dr. Piens. ...	....	5	....	50	Public.
Tournai	Dr. F. Leutz	70	....	600	....	Public.
Tournai	Dr. Duhem		10	....	45	Public.
Wez Velvain.. ...	Dr. Duheen.....	....	32	...	..	Private.
Chiéores.....	Dr. Le Clercq....	....	10	....	....	Private.
Mons.....	Dr. Semal.....	....	94	...	405	Public.
Liege.....	Dr. Auten.....	....	....	....	100	Public.
Liege	Dr. Clossett.....	20	....	140	....	Public.
Glain.....	Dr. Auten.....	....	70	....	40	Private.
Henri-Chapelle....	Dr. Henfling.....	30	....	....	....	Private.
St. Trond.....	Dr. De Bruyn....	100	....	350	....	Public.
" "	Dr. De Bruyn....	....	50	....	200	Public.
Loreken	Dr. Vanneste.....	....	....	....	27	Public.

Note.—This table must not be taken to be complete for Belgium, as some asylums are omitted, as at Antwerp, Malines, Louvain, Alost, Menin, Bruges, Evere, Erp, Quebs, the Colonies at Gheel and Liernieux, and others, but it is undoubtedly reliable as far as it gives names and inmates.

A CLINICAL AND FORENSIC STUDY OF TRANCE.

PROFESSOR EDWARD P. THWING, M. D., PH. D.

The battle ground of science to-day is the Involuntary Life. Or, as another has phrased it, "The relation of automatism to responsibility." The theme opens a wide continent of thought. A few landmarks will prove helpful.

SURVEY OF THE FIELD.

A new chapter of the militant history of human speculations is being written. A new arena of conflict is reached. New forces are marshalled. New weapons of warfare are demanded, and new strategic points are to be gained. Vast changes are seen in philosophic thought, in traditional theology, in historic criticism, and in scientific research. The limits of scientific inquiry are more clearly understood, and the essential unity of truth proved. The very perturbations of the human mind often herald the incoming of new light, just as the near approach of Neptune through measureless space was foretold by prophetic disturbances in the outermost orbit of our ever broadening solar system. Let not ignorance and prejudice silence any Le Verrier of our day who dares to widen the field of inquiry, or force him to stand, as in ancient days the propounder of a new law stood, with a halter about his neck, with which the populace might hang him if displeased with the innovation.* We must not retard the progress of

*Medico-Legal Soc. Papers, Series III, p. 360.

knowledge by looking at the phenomena of life "through the dulled eyes of custom and traditional opinion," but show "openness and simplicity of mind, readiness to entertain, willingness to accept and enthusiasm to pursue a new idea,"* remembering that

> "There are great truths that pitch their shining tents
> Outside our walls, and though but dimly seen
> In the grey dawn, they will be manifest
> When the light widens into perfect day."

PSYCHOLOGY AND MEDICINE.

The facts of the involuntary life, of which the Trance is the supreme expression, have been observed for centuries. But not until recent years have biological and medical investigators classified and formulated the phenomena involved. Cerebro-physiology has latterly made rapid advances.

The first medical book placed in my hands by my preceptor in 1852, was Bichat's Anatomy. Professor Huxley calls this learned Frenchman "the acute founder of general anatomy." Bichat laid down, for the first time, the distinction between the organic and animal, the conscious and unconscious life of the individual. He made life to be the unity of separate lives of organic parts. This doctrine of synthesis he applied to pathology.

Diseases were like the perturbations of the planetary system. Therapeutics must show how to eliminate them. The way was cleared for a closer unity between biology and medicine. "Science and Culture," by Darwin, closes with this query: "How can medical education be so arranged as to give the student a firm grasp of biology?" Without it, he is but an empiric, notwith-

*Reign of Law, Duke of Argyle, Chap. VII.

standing all the progress of what is called "scientific medicine."

Medicine, like agriculture, took its origin in the needs of man. As chemistry and vegetable physiology gave agriculture a scientific basis, so psychology is to give to medicine a wider, richer development in the near future. In 1870 the American Medical Association adopted a resolution requesting medical colleges to establish chairs of psychology. It was then said: "Very few in the medical profession understand it. Here is an immense field to cultivate, and it will yield a rich harvest. Books, periodicals and lectures give only a glimmer. One must patiently, persistently study his feelings, impressions and repulsions in various relations and conditions." He must also be an acute and accurate observer of these conditions in others. Then the sneer of Voltaire will no longer have any basis in fact: "The doctor is one who pours drugs of which he knows little, into a body of which he knows less." Professor Tyndall says that "hitherto medicine has been a collection of empirical rules, interpreted according to the sagacity of each physician." But we need to know the mind and soul as well as the liver and spleen. We need to treat the patient as well as the disease. Then will be realized the fullness of the Hippocratean beatitude, "That physician who is also a philosopher is godlike."

PSYCHOLOGY AND LAW.

The basis of litigation is continually found in alleged disorders of the mind and nervous system. The intelligent lawyer must study the neuropathic condition of criminals, with the immediate and remote factors involved, in order to determine the degree of responsibility, and so of guilt. No where in the world, accord-

ing to Edmund Burke, is law so generally studied as in this country. De Tocqueville made it one of the supreme tutelar forces of our Republic. Had he lived to see the completion of the first century of American law, he would have spoken with greater emphasis ; for, though "all govermental affairs travel in the path of prece dence,"* there has been great advance in the line of procedure, evidence and competence of witnesses. Still, it is true that laws are changing. "Leges humanæ nascuntur, vivunt et moriuntur ; posteriores priores contrarias abrogant."† Had our political system been less flexible, it never would have survived the strain to which the exigences of its first century have subjected it.

Ex-Judge Davis points out the need of still further changes, when he refers, in the line of this discussion, to the Status Ebrietatis,, and the place of the expert. "It has long been evident that the State needs to give some systematic attention to the adequate presentation in criminal trials of the light which science throws on the subject, when the prosecution is met by the defence of insanity." He suggests that "all expert testimony of a medical character be independent of the selection of the parties, and placed, in respect to impartiality—though, perhaps, not in controlling authority upon the jury—in position like that of the judge."

Speaking on this point, one of the judges of the Supreme Court recently remarked to the writer: "You medical men instinctively look at the facts of a case from a purely scientific point of view, while the law looks at the matter in the light of the public welfare." So Thucydides says that Cleon urged the Athenians to execute the Mitylænean revolters as an act of retaliation, while Diodotus argued that they were sitting in delib-

*Joel Prentiss Bishop. †Coke VII, 25; Rolle II, 410.

eration and not in judgment; that expediency. and not naked justice, was to be considered; not what might be done under the law, but what was advisable. The man of science should not be destitute of a judicial temper, and the lawyer should not lack a true, scientific spirit. But there are other lines in which these preliminary considerations point. All the learned professions are equally interested in the survey of this field of automatism and responsibility.

PSYCHOLOGY AND THEOLOGY.

The intelligent understanding of practical psychology will help to rid religion of superstition, and give illumination to the teachings of Christianity, both as to the life that now is and that which is to come. There are problems of an exegetical character which the theologian will find cleared of much of their difficulty by the facts which wait enunciation. There are historical and homiletical relations which would require ample space to unfold. The moral and religious bearings of the Involuntary Life have been elsewhere considered.*

We are now ready to look at the genesis and features of that form of Involuntary Life known as TRANCE.

GENESIS OF TRANCE.

Trance, transit, "the passing over" from the voluntary, conscious state to the involuntary and automatic, is a condition or process which varies with the cause which originates it. It may be purely a pathological condition. It may be induced by suggestion, fixation, manipulation or other means as a scientific experiment. The initial and terminal bounds, with the intermediate phenomena, change as these conditions change. There

* Thwing's Handbook of Anthropology, pp. 48–50, and American Institute of Christian Philosophy, Proceedings, 1884–5.

have been fourteen kinds of trance described according to clinical features, such as somnambulistic, intellectual (or reverie), emotional, ecstatic, alcoholic, mesmeric, epileptic and cataleptic.*

These all have some features in common, as in the hypertrophy and persistence of mental impressions, but vary in detail according to the origin of the condition, and the individual in whom trance is induced.

In passing, it should be understood that, so far from being a proof of mental weakness, trance is a condition "into which many, if not most, of those who have left the stamp of their own character on the religious history of mankind have been liable to pass at times. The union of intense feeling, strong volition, long- continued thought—the conditions of all wide and lasting influence—aided in many cases by the withdrawal from the lower life of the support which is needed to maintain a healthy equilibrium, appears to have been more than the 'earthen vessel' will bear. *Exstasis* is the state in which a man has passed out of the usual order of his life, beyond the usual limits of consciousness and volition. *Excessus*, in like manner became a synonym for the condition of seeming death to the outer world which we speak of as trance. From the time of Hippocrates, who uses it to describe the loss of conscious perception, it had probably borne the connotation which it has had, with shades of meaning for good or evil, ever since."†

CLINICAL FEATURES.

St. Paul and other apostles and the prophets give some hints as to the origin and characteristics of this state.

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* Nature and Phenomena of Trance, Dr. George M Beard. G. P. Putnam's Sons, 1881.

† Dr. Wm. Smith's Bible Dictionary, "Trance."

Many other great men since have left important data, particularly the eminent scientist, Professor Agassiz. He invited experiments on himself and made a conscientious record of them over his own signature.* One feature of value in this clinical record is the triumph gained over a superior mind that resisted the operator, and his candid statement of the delight which followed surrendry. The experimenter was Townsend, at Neufchatel, and Mons. Desor was witness. "The moment I saw him endeavoring to exert an action upon me, I silently addressed the Author of all things, beseeching him to give me power to resist the influence and to be conscientious in regard to the facts" Ocular fixation induced weariness, and digital movements in front of the eyes deepened drowsiness. Other manipulations induced "and indescribable sensation of delight." Speech and vision were suspended, but hearing remained. After an hour of helplessness Agassiz "wished to wake, but could not. It appeared to me that enough had been done with me." Though in a state of confused pleasure, he "was inwardly sorrowful to have it prolonged. Quick transverse movements, outward from the middle of the face, at once broke the spell. A word would have done as well.

From my records of 140 cases of trance, during the past six years, including the written statements of some very intelligent patients themselves, I could easily compile a large volume. Enough, however, has been said as to the experimental or artificial trance in its clinical features. If we attempt to explain the pathology of the unconscious, automatic life we find ourselves involved in endless speculations. The alleged *vis magnetica* of ancient thaumaturgists we ignore. That this is a sub-

* *Notes Relatifs au Magnetisme.* C. H. Townshend.

jective phenomenon needs now no argument. Sudden and enrapturing emotions, continued fasting or overpowering fear, develop it. A man of penetrating personality and commanding will, by slow and seductive processes, or by swift assault that leaves no time to question or repel, startling and abrupt as the gong of the Salpétriere, may capture both consenting and recalcitrant souls. Prof. Laycock thinks that the theory of reflex action in the cortex of the brain explains the exaltation of perception and the dulling of self consciousness. Another suggests cerebral anæmia, or analogous encephalic exhaustion at the expense of sensory ganglia. Dr. Mortimer Granville makes normal sleep the sum total of five factors: Muscular, visceral, sensory, automatic and cerebral repose. He differentiates 36 varieties of disturbance, which it would be irrelevant now to name. Dr. Liebault assumes the fact of serene and restful repose in hypnosis, from not only the bodily ease and facial expression, but from the answer uniformly given by the entranced, when left alone, to the query. "What are you thinking of?" He says, "nothing," whereas in ordinary sleep the brain is active. The tracings of the myograph and pneumograph are helpful at this point, as well as in the exclusion of the possibility of simulation.

From the days of Liebnitz mental automatism has been studied with increasing attention. Its limit and condition is the personal equation which distinguish men. Braid nearly half a century ago laid the foundations on which Professor Charcot ten years ago begun to rear a scientific system. This accomplished French scholar began with the simplest clinical facts of hysteria as a basis, such as the reflex action of the cortex, a passive and plastic condition favorable to control. He

noted also certain zones of cutaneous areas and hypogenious pressure points, irregularly distributed over the body, the manipulation of which induces sleep, as the pressure of other points induces tetanic paroxysms in some epileptic patients. Another fact proved was the abortive treatment of hysteroidal attacks by hypnosis. A third was the palliative and remedial effects, by the same agent, in muscular contractions and paresis, which complicated the original trouble. Indeed, the field is so large and the clinical facts so abundant and enticing there is danger of giving an undue space to them rather than to the forensic relations of the whole subject.

FORENSIC RELATIONS.

We pass at once to the ethical and legal bearings of trance. Six questions will guide us. They have been all presented to and answered by one of our ablest judges, but his opinion and my own are withheld, as the aim of this paper is tentative and suggestive, intended to elicit and not to close discussion.

1. Is any reconstruction of the laws of evidence needed in view of the facts of the Involuntary Life? Allusion has been made to perversions of the senses, to the hypertrophy and continuity of mental impressions. To this might be added the moral as well as sensory hallucinations which have been unquestionably created by external suggestion. A third point—which, if ever alluded to in the copious literature of the subject, has escaped my notice—is sexual erethism, an occasional sequel of this form of induced unconsciousness, as it frequently is a result of the inhalation of nitrous oxide gas, or sulphuric ether in surgical clinics. A glance at each of these suggestions is all that the limits of the discussion allow.

As to the testimony of the senses. It has been said that seeing is believing, and if the testimony of the senses is not to be received our courts of justice might as well be closed at once. There is truth in this, but not the whole truth. John Stuart Mill believed, with his father, in the sensuous origin of all knowledge, saying: "Nihil in intellectum quod not prius in sensu." Dr. Beard went to the other extreme, and said that "only fools trust the sight. Seeing is not believing but doubting, for what is all human science but a correcting of the errors and a supplementing of the defects of the senses?" In 1884 while questioning a sensitive as to certain illusions created by my suggestion and made real on returning to the normal state, I remarked: "Would you take your oath in a court of justice that you had seen these objects and experienced these sensations?" "Certainly I would," was the reply. "You see the value of some human testimony," I remarked to bystanders. One of them chanced to be Prof. William James, M. D., of Harvard College. This accomplished psychologist has recently made valuable contributions to physiological optics and showed by diagrams how illusionary certain spatial distances are, even to one in the normal state. He says that the "facts of vision form a jungle of intricacy." Only culture, experience and a sound cerebrum are trustworthy witnesses of visual facts. "The whole education of the artist consists in his learning to see the presented signs as well as the represented things."*

Helmholtz shows that the vitreous humor always holds the *muscæ voliantes*, but they are not noticed till some lesion is suffered and the attention drawn to them

Mind Oct., 1887. Also, LOTZE, *Med. Psych.*, 428, et super. LIPPS, *Grundtalsachen des Seelenlebens.*

as to a new discovery. The fact that one eye has become blind has not been noticed for some time, till the accidental closure of one eye, the sound one, reveals the fact. Volkmann* says that the excitement of one set of retinal fibres will inhibit the function of another set and prevent discrimination. Still further retinal stimulation may restore normal vision. "Fallacies innumerable exist until optical discrimination is educated and the verdict of certain chaotic primitive sensations is corrected by a larger knowledge." Prof. James adds: "In the matter of taste, it seems to me that most men are normally nearer the trance state than in respect of their other sensations. Suggestion (as to tasting) influences them more easily. The peculiarity of the trance subject is that *all* emotions are falsified and overpowered by the imagination. In all men some sensations are. As we approach the sense of hearing deceptions abound." In experiments with university men, students of his, I illustrated, several years ago, some of these conclusions most satisfactorly, as he thought.

The argument is this. If there may be a sympathetic reproduction of ideas in another while he is presumably in a normal condition, may there not be a far more vivid duplication or perversion in the mind of the entranced? If optical errors deceive men in ordinary experience, may not psychological suggestions mislead when extraordinary influences bind as with a spell? And what is the value of the testimony of those who are thus readily thrown out of mental equilibrium?

Still more serious is the query when it is moral accuracy, rather than the certitude of visual or gustatory experiences which is to be determined. Visual errors are common and often vexatious and embarrassing, but

*Untersuchungen, 242 et super.

perversions of the moral sense are more perilous to the individual and to society.

A letter from Paris to a New York periodical records the confession of a French gendarme, who said that he had committed murder. His language was: "Arrest me! I am a coward and murderer. I have soiled an unspotted life by an odious and stupid crime." "Why?" he was asked. "I do not know. He looked at me with a defiant air. I did not know him. I held a knife in my hand and drove it into his heart. I heard it scrape against his ribs—mercy! mercy!" The stalwart officer fainted. The man was the subject of an experiment. One of the professors of the Academy of Medicine had hypnotized him, given him a wooden spatula, calling it a dagger, and pointed out a tree which was made to him to appear as an offensive intruder. He was told to stab him and return and report the details, which he did as just narrated. The stealthy approach to his supposed victim; his wary, anxious, furtive glances to see if he was watched; the ghastly pallor of face and agony of tone shown in the confession; and the physical collapse, as well as the difficulty with which he was afterward ridden of the impression that still haunted him like the nightmare, attested the genuineness of the experiment. Similar cases here might be given where persons laboring under delusions have needlessly inculpated themselves. Grave accusations against others also are made of acts that have no existence outside their own disordered fancy. Incidents could be given to illustrate the erotic as well as erratic whims which are created by hypnotism in neurotic females, identical with the aberrations attendant on the use of anæsthetics. Their subjective sensations are to them objective realities. Their statement is intended to be truthful, but as legitimate

evidence it is worthless.* Their dominant idea is well called by Carlyle "diluted insanity." It was this spectral testimony that sent thousands to death as witches,

> "In courts where ghosts appear as witnesses,
> And swear men's lives away,"

on the principle stated in Fatinitza, "Flog first, explanations afterwards." Shall this *verrüchtheit* always prevail?

2. Is the training of the medical expert complete without a better understanding of this subject? To state the question is to answer it. There are, indeed, few who are familiar with the principles of legal and medical science alike. One man rarely masters two professions in all their details. But may not the training in each, law and medicine, be broadened so as to embrace a fuller knowledge of the profound truths of psychology? Can the perplexing questions which arise —as well in our civic courts as in the higher—be fairly met without a better acquaintance with the borderland of insanity in which so many live? Is not the prevailing ignorance on this subject the frequent cause of popular and professional jealousy and dislike with reference to expert testimony?

An English judge has recently suppressed the expression of a medical man's opinion about to be offered in evidence on an insanity plea, and given notice that in every future case he will deal with all medical and scientific experts in the same way. They may simply say what they saw and heard, but give no opinion.† "For a man to have close and intimate practical knowledge of some part of the field of science is, in some quarters, apparently a reason why his deliberately

* Hamilton's Medical Jurisprudence, p. 493.

† British Medical Journal, March 3, 1888, p. 477.

formed opinion on a subject within the sphere of his studies should be suppressed in a court of law, and the point of issue be decided by untrained minds. Carry this to its logical conclusion, and we must set up ignorance as a chief qualification of those fitted to decide scientific questions!" It is not strange that the editorial writer quoted, calls for some public authority outside to initiate a change in view of such inexplicable ruling.

3. May not malingering among the insane and others be sooner detected by the application of the facts of the Involuntary Life? The simulation of diseases and disabilities is a common occurrence met with by all who have their fellowmen in durance. Subjective symptoms are very misleading, as the testimony of officers of prisons and asylums will show. A military deserter to escape punishment remained apparently unconscious for more than two months.* Beck and Gavin tell of others whose pretended insensibility was not detected by aloes in the mouth, shower bath or electricity. Only the actual cautery intimidated. Somnambulism has been feigned to cover crime, or to excite pity; so, also, deaf mutism, paralysis, contractures, hemorrhagic and cutaneous conditions. Recent experiments on himself by Dr. Ossip Feldman, of Russia, before the Medico-Legal Society, demonstrate the power of acceleration and retardation of the heart's action within wide bounds, possessed by some skilful experimenters. The sphymograph alone is an insufficient guide or test in detecting the malingerer. The myographium, as used by Charcot, is more satisfactory, particularly in hysterical tranmatic contractures. But mechanical appliances are only decisive in the hands of those who understand the

* Edinburgh Annual Register. Vol. iv.

normal and aberrant features of human thought and feeling. Science demands the severest scrutiny of all phenomena, and the elimination of every possible element of fraud, deliberate or unconscious.

Six sources of error have been signalized into which investigators are likely to fall*. The first, the overlooking of those interactions of the mind and body below the plane of volition and consciousness; and secondly, the innocent self-deception of the subject experimented on. A knowledge of trance-actions is indispensable to detect self-imposition. Counter-deception is advised; that is, doing nothing when something is expected, doing something when nothing is expected and doing something different from what the sensitive believes is being done. Deliberate deception, the third source of error, is to be met in the same way. Intended and unintentional collusion of third parties form to more sources, and the overlooking of the element of chance, and coincidences is a sixth.

The question of the detection of malingering is really a corollary of the previous one as to the training of medical experts as witnesses in legal trials. This brief allusion is sufficient to show its commanding importance.

4. Reviewing the clinical and forensic facts considered in reference to trance, we now ask: Is there need of any legal surveillance in private experiments or public exhibitions? Civil authorities have in foreign cities occasionally restricted or prohibited them, and the British Medical Journal for March 3, speaking of the artficial trance, while crediting it with curative results in hysteria, adds: "A far more serious and thorny question is

* Experiments with Living Human Beings. Popular Science Monthly, March and April, 1879.

that which bears on the medico-legal aspect. The impairment of volition which results from repeated induction of this condition is a factor of which the law ought to take cognizance." Temporary insanity has sometimes followed injudicious experiments and exciting concomitants, particularly where an unskilled operator loses his own self-possession.*

As trance has been invoked and used successfully in the control, if not eradication, of vicious appetites, it is quite possible to implant permanent tastes for persons, objects and indulgencies, good or evil, and to intensify the same by repetition. This is but a hint of the amazing perils and possibilities of a developing science. It also gives emphasis to the query as to any special custody in which parties should be held who are related as experimenter and subject.

"He touches heaven who lays his hand upon a human frame," says an enthusiastic German writer; but he gets near to the Creator who knows how to evoke, direct, control and utilize these marvelous psychic phenomena in the service of humanity.

5. Is it justifiable to use this condition as an inquisitorial agent? The revivification of memory in the exaltation of trance constitutes what has been called "an artificial day of judgment." Through inquiry and suggestion the mind is steered along a labyrinth of

*"Subjects are generally not injured physically, but benefitted by the habit of going into artificial trance; but there are exceptions, especially with those who develop the phenomena of trance seeing. Suicide can be committed by persons in any of the natural forms of trance. It is possible for the operator to rob a trance subject while in trance sleep, or kill him, or to inflict any injury upon him whatsoever. He can compel him to commit suicide at a definite time, several minutes in advance; meanwhile the operator can get out of the way. He can cause him to sign documents or to transfer property or to make a will. When two persons are in trance they can be made to fight a duel. The responsibility in all these cases rests with the operator and no new laws are needed."—*Dr. G. M. Beard*

bygone events, names, places and dates. "Crimes are revealed in this condition, even dating back to early childhood. We have absolute control of the subject and absolutely demonstrative experiments of the genuineness of these trance confessions can be made." Detectives have availed themselves of the confessions of the intoxicated, and alienists have profitably studied the insane while asleep. The query suggested by these facts is this: Is it justifiable to take advantage of a person in this abnormal state and lead him to inculpate himself if suspected of wrong doing?

6. A final question remains: Is any revision of the penal code desirable in view of the facts which the present scientific study of this matter has elicited? This carries us back to the initial and germinal idea of the whole discussion, the relation of automatism to responsibility. It is an ethical as well as a physiological question. It is related to the profound problem of criminal authropology, and so comes within the scope of legislation. Is man only an automaton? Has consciousness —the self-recognition of the *ego*—any causative relation to physical action? Have volitions any power, or was Emerson mistaken in saying that "thoughts rule the world?"

We all admit the fact of an acquired automatism, the product of habit, a second nature as it is called, but is there, or is there not, a self-determining power of the will? Have the phenomena of the Involuntary Life made man irresponsible? It is believed that the bulk of men, if not all, are susceptible: that is they would or could enter trance under favorable conditions. Does this—assuming it to be a fact—militate against the freedom of the will? And are those who recognize their special susceptibility and admit their frequent surrendry of con-

sciousness and volition, in experimental tests, to be regarded with any more favor or consideration before the law than are the victims of strong drink? Is this susceptibility to trance strictly a disease, or akin to insanity? If so, the acts of the entranced come to be, in some sense, those of irresponsible agents.

The subject is copious, but it is time to say with Virgil's shepherd :

"Claudite jam rivos, pueri; sat prata biberunt"

The further we explore this wonderland the more abundant and alluring does the wealth of material become. This paper is but a hint of what is left unsaid. As Columbus caught sight of the Orinoco he exclaimed : "This river flows not from an island, but from a continent!" He was right. It drains 650,000 square miles, and receives the water of nearly three thousand tributaries. It is a fit symbol of the opulence of that vast and comparatively unknown continent of truth which psychology has begun to explore. We have hardly passed the portals. "A great door is opened unto us, and there are many adversaries" and difficulties to overcome. But science is unabashed, as slowly but surely onward she makes her solemn journey into this land of maze and mystery.

MONOMANIA.

By Clark Bell, Esq.
President of the Medico-Legal Society of New York.

"There is a pleasure in being mad, which none but madmen know."—(Dryden.)

Webster defines monomania as follows:

"Derangement of a single faculty of the mind, or with regard to a particular subject, the other faculties being in regular exercise."

Worcester defines it from its Greek roots: *μονος*, single, and *μανια*, madness.

"Insanity upon one particular subject, the mind being in a sound state with respect to other matters."

Quains Medical Dictionary in a definition under this head, written by Dr. G. F. Blandford about 1882, says: "This term is falling into disuse on account of its vagueness, and because it has been employed by various writers to denote different kinds of insanity. Some have used it to denote an insanity which is indicated by some one particular delusion, the mind remaining clear on every other point. Others mean by it an insanity without delusion; an *affective* or *impulsive* insanity, the essence of which is the absence of delusion and the so-called integrity of the intellectual portion of the mind."

Esquirol thought it a disorder of the faculties limited to a few subjects, with excitement and gay and expansive passion, while according to others *melancholia* without delusion would be an instance of affective *monomania*. "We may take it, however, that all authors are agreed in using the term *monomania* to indicate a par-

tial insanity, which enables the patient to converse and act rationally to a considerable degree, and therefore renders his responsibility a matter of question. Such cases form the ground of forensic contests, whether criminal or civil ; but it is better to affix to them some more precise form and to indicate symptomatologically and pathologically the exact nature of the mental and bodily condition of the alleged lunatic."

Esquirol evidently regarded *monomania* in a different light from the English lexicographers. He, though a pupil and an ardent disciple of the great Pinel, made *monomania* a separate order and head of a class in his classification. PINEL had classified insanity as Neuroses under four heads, viz: Mania, Melancholia, Dementia and Idiotism. Esquirol modified this plan as follows: 1st, Lypomania; 2d, Monomania; 3d, Mania; 4th, Dementia; 5th, Imbecility and Idiocy.

In describing *monomania* Esquirol says: "Among *monomaniacs* the passions are gay and expansive; enjoying a sense of perfect health, of augmented muscular power and of general well being, this class of patients seize upon the cheerful side of everything; satisfied with themselves they are content with others. They are happy, joyous and communicative; they sing, laugh and dance. Controlled by vanity and self-love, they delight in their own vainglorious convictions in their thoughts of grandeur, power and wealth; they are active, petulent, inexhaustable, in their loquacity and speaking constantly of their felicity. They are susceptible and irritable; their impressions are vivid, their affections energetic, their determinations violent; disliking opposition and restraint, they easily become angry and even furious."

Esquirol, by selecting *monomania* as one of his sep-

arate heads or forms, may be said to have been the one who introduced this nomenclature to the profession—its author or proposer. Upon his authority this term has been adopted by a large number of the medical and by a few of the lay writers.

Morel, in criticising Esquirol's definition and description of *monomania*, says: "We cannot too strongly invite the attentive reader to reflect upon these peremptory passages and consider whether Pinel and Esquirol, who wrote them, should not have arrived at the conclusion that through an unfortunate confusion of ideas they mistook a systemized delusion for an exclusive and local delusion. We affirm the close connection, the solidarity of the ultimate relation between the various acts of the intelligence, not only in the home of our observations and of our personal inductions, but also in the name of the history of philosophy. This being granted the question is whether the condition of mental alienation can break this essential law of the unity of intellectual life; for it is clear that if logic and experience constrain us to decide this problem in the negative, we ought also to reject the theory of ESQUIROL. We could not have a complete idea of the motives which impel the insane to some of their acts, unless we were freed from error in regard to *monomania*.

Dagonet thus speaks of *monomania*: "In fine, the term *monomania* might without inconvenience disappear from science, where it becomes a cause of confusion and embarrassment in the study of pathological facts."

Marc, who wrote in 1840, and who was a careful student and countryman of Esquirol and Pinel, devotes considerable space to *monomania*. He takes similar views to the illustrious Frenchmen who had preceded him, and treated *monomania* as a type or phase of

insanity, subdividing it into Homicidal Monomania, Suicidal Monomania, Demoniacal Monomania, Sexual Monomania or Erotomania, Monomanie du vol, or Cleptomania, Incendiary Monomania or Pyromania, and lastly Contagious Monomania. (Vol. 1, Marc on Insanity, p. 221 Annales de Hygiene et de Med Legale, Vol. X, p. 357.)

A study of this author illustrates how utterly misleading the term *monomania* is, and how completely and fundamentally authors who do use the term, differ as to its meaning.

Pope means the monomaniacs of Esquirol in his verses :

"Unnumbered throngs on every side are seen,
Of bodies changed to various forms by spleen ·
Here living teapots stand, one arm held out ;
One bent ; the handle this, and that the spout
A pipkin there like Homers tripod walks ;
Here sighs a jar, and then a goose pie talks."

The lay writers, judges and lawyers almost universally, have given to the term monomania the signification and definition, that Webster and Worcester give in their lexicons.

The judge on the bench, the lawyer and jurist everywhere, regard the monomaniac as one who labors under some *one* delusion, and in all other respects possesses clear faculties. It has been made the subject of judicial decisions in that class of cases denominated "partial insanity," as well as in "insanity with lucid intervals," both of which the law fully recognize, where the evidence brings the case within either of these states or conditions, which to the legal and general lay mind, seem clearly recognizable and definable. Among many medical writers this general view of the laity is not accepted.

Kraft-Ebing and the German medical alienists do not use it in such a sense, nor within such limitations.

In Kraft-Ebing's classification of insanity he divides mental disturbances into two great classes: A. Mental affection of the developed brain, which embraces all forms of insanity, and under B. Mental results of arrested brain development, as idiocy and cretinism. Of class A. he makes three subdivisions:

1. Psychoneuroses.

a. Primary curable conditions, and

2. Secondary incurable states under subdivision

a., of which he names "*secundaen verruecktheit*," which is translated by some as "secondary monomania."

In his second subdivision of class A.

2. PSYCHICAL DEGENERATIVE STATES, under subdivision C, of which he gives "*primaere verruecktheit*," which has been translated by some, and we think improperly, "*Primary Monomania.*" It is not at all certain that Kraft-Ebing means, to embrace in his classification under these terms, the monomonia of Esquirol and Pinel, nor the state which is now usually meant by the German writers, when the term *monomania* is used. There is no high authority we have seen for claiming that Kraft-Ebing would consent, to the use of these terms as synonymous. In the second subdivision of his criticism upon classification of mental diseases, he says:

"Melancholia in the sense of dejection, is closely allied with self-complaining monomania and "demeaning monomania," known as one of the forms of disease frequently found outside of asylums, but rarely in them."

3. Upon the whole, exhilaration with self-vaunting monomania, and volubility of expression, are seldom enumerated under the heads of mania, nor in any delir-

ious state. This classification separates the latter state, from the forms of acute insanity, just as it does exhilaration, from the self-vaunting monomania, of chronic primary insanity.

Theodore Meynert certainly does not use the various forms of monomania referred to in his paper on classification, read before the Austri-Hungarian School of Psichiatry, a translation of which by Albert Bach, is found in No. 4, Vol. 3 of the *Medico-Legal Journal*.

Prof. Senator Andrea Verga certainly does not mean such a type or form of insanity, in the monomania he includes as a distinct heading, and as one of his subdivisions of acquired phrenoses. He enters it as a type, and subdivides monomania into two classes, "Intellectual and Emotional." Indeed, it cannot be said that these terms either mean the same thing in their literal meaning, or that the states described by the German term, *Verrueckttheit*, having anything in common, with what is usually regarded as monomania, by either medical or lay writers. It is significant that Kraft-Ebing, in his classification, does not use the term monomania at all, and it is more easy to believe that this celebrated German writer, is one of those, who have decided to discard it altogether.

The American authority, Prof. Ewell, who has translated Kraft-Ebing's classification into his recent treatise, has doubtless been misled, by copying from some of the younger writers, who make this translation more to support theories of their own, than to interpret the author's true meaning. Indeed, as used by Kraft-Ebing in his classification, neither "primaere verrueckttheit" nor "Secundaen verrueckttheit" as classified by him, can by any fair construction be claimed to mean, the monomania now in use in English-speaking countries, because subdivision 2 of Kraft-Ebing's classification refers to incura-

b'e types, and in other respects differs, from the generally received opinion of the proper use of the term, "Monomania," though no one is in doubt as to the literal meaning of the "verruecktheit" of the Germans of which we speak elsewhere.

Greisenger, that eminent name, in speaking on this subject, says:

"Thus the excitement of the monomaniac does not pass so immediately towards the exterior; effort is accompanied by clear conscious thoughts and opinions loses thereby its instinctive character, and becomes actual morbid volition. With far greater, sometimes with perfect outward calm, there is a more profound internal loss of reason, than in mania, because consequences soon result from the general excitation which set aside the essential conditions of healthy mental action." Prof. Lefebere, in his class:fication, does not include monomania as a head, but in discussing the subject in the paper read before the Antwerp Congress of September, 1885, on the various forms of mania, he says: "Then the extent of the delirium, whether general or partial mania or various, and the various forms of monomania, moral and intellectual insanity should also be regarded as proper subdivisions to types of *monomania*."

It is quite apparent that none of the Belgian Alienists regard monomania with such limitations as do English and American jurists or lay writers. Dr. Steenburg, in his basis of classification submitted to the Belgian Society, after a full conference with prominent alienists in Denmark, Norway and Sweden submits, seven distinct heads or forms of insanity, the third of which he classifies as Degenerative Insanity, which he subdivides as follows: "Primare verruecktheit" or monomania, Hypocondria, Hysteria, Recurrent Insanity, and Moral

Insanity. The primare verruecktheit of the Germans, has a much broader sense than can be properly given to the term "monomania," though it would seem that there is an attempt by some writers to use them synonymously. The verruecktheit is derived from "verruckt," which means "shifted from its place"—and is analagous to the Scotch phrase indicative of a derangement of the mind, "a bee in the bonnet," or our own expression, "a screw loose," or the significant term, "cracked." Neither of these expressions can with any propriety mean or be used for "monomania," and there is nothing in the etymology of these expressions that at all indicates or means "monomaniacs." Sankey says, speaking of Greisenger's work below, that he divided it into three parts. 1st: States of mental depression; 2d, states of mental exaltation; 3d, states of mental weakness, and in considering the latter he makes four degrees, or excluding the last, *Idiocy*. three degrees of mental weakness. The first of these three divisions, *verruecktheit*, the second, *verwertheil*, and the third *blodsin*. Verruecktheit corresponds to our word, imbecility, but Greisenger was, he says, criticised for including this, which, as was said above, literally means a defect in intellect, among the states of mental weakness, since in certain cases according to his own accounts, there remains a good deal of tendency to violence. (Sankey on Mental Diseases, p. 187, et seq.)

Dr. Ralph Parsons says that "within the past few years the term, paranoia, has been used to a considerable extent as a substitute for the term monomania, especially by the younger writers on the subject of mental diseases." But he claims that the objections to this term as a substitute, are as forcible and strong, as to the use of the term *monomania* itself, because "If the meaning

of monomania is too narrow, for the purpose required, that of paranoia is too broad, and it may be added, too definite for the designation of something different from its evident meaning, which is simply distraction, craziness, insanity."

Paranoia, as the synonym of folly, retains its original signification and has nothing in common with the meaning to be conveyed by the term monomania."

Ewell, in his recent work on Medical Jurisprudence, makes monomania synonomous with paranoia, adopting the views of the ambitious young writer who can hardly be regarded as an authority, and thus defines monomania: "Monomania, as it has hitherto been called, or 'Paranoia,' is a chronic form of insanity, based on an acquired or transmitted nero-degenerative taint, and manifesting itself in anomalies of conceptional sphere which, while they do not destructively involve the entire mental mechanism, denominate it." (Ewell's Med. Juris., p. 360.)

Sankey says upon this subject: "Monomania—This term has been used in different ways; by some it is taken to mean that a patient was mad on only one point or one subject. Such was not the signification meant by those who proposed it, and such a condition does not exist. Most writers have agreed to abandon the term. (Sankey on Mental Diseases, p. 194.)

Greisenger holds similar views. (i. e., Patholigie and Therapie de Psychischent Krankherten, 45.)

Dr. W. A. Hammond in his classification of insanity makes seven general divisions: 1. Perceptional; 2. Intellectual; 3. Emotional; 4. Volitional; 5. Compound; 6. Constitutional; 7. Arrest of Mental Development. In his second subdivision on intellectual insanities he makes six subdivisions, the first two of which

are: *a*. Intellectual monomania, with exaltation. *b*. Intellectual monomania, with depression.

Dr. Ray does not include the term monomania in his classification. Neither do Dr. R. L. Parsons, Dr. H. P. Stearns, nor Dr. Walter Channing. It is not named in the basis adopted by the German alienists at Frankfort on the Main in 1881; in the Westphal plan of 1885, nor the Wiesbaden plan of 1883, nor in Meynerts classification, that of the Swiss alienists submitted by Prof. Willie, nor that submitted by Dr. Steenberg for the Scandinavian countries. By the manner in which they use it, their seventh general heading is "chronic delirium" (monomania). There would be confusion and difference of opinion between American and English lawyers and physicians. as to the exact meaning intended to be given by the English alienists, in embracing "monomania" in brackets under the general head of "chronic delirium." It would seem to imply as there used rather certain phases of chronic or incurable mania than an insanity limited to a single subject or indeed a class of subjects.

Dr. Hack Tuke thus speaks of the subject: "We heartily wish 'monomania' had never been introduced into psychological nosologies, for if understood in a literal sense, its very existence is disputed, and if not the various morbid mental conditions it is made to include by different writers, leads to hopeless confusion. With one author it means only a fixed morbid idea, with another only partial exaltations, while a third restricts it to a single morbid impulse. As we proceed we shall consider its signification, but we shall not frequently employ the term."

Dr. Henry Maudsley, writing on monomania, says: "The course of monomania is not often toward recovery. The reasons are plain: In the first place, when it is

secondary to mania or melancholia, it signifies a chronic morbid condition, which is a further stage of degeneration, of the delicate organization of mind. In the second place, when it is primary, it is the morbid outgrowth of a fundamental quality of character, so that to get rid of it, would be to undo the very character from its foundation." And again: "It is doubtful whether there is ever only one point, on which the mind is unsound." And again: "When the monomaniac (so called) comes under the observation of one, who is not only competent to observe, but has sufficient opportunities to do so, it will commonly be found, that there is a bluntness or loss of his natural affection and social feeling, in consequence of his being so entirely centered, in his morbid self; that his character and habits have undergone some change, and that he exhibits an excitability of mind, with loss of self control, in circumstances which would not formerly have provoked it."

The Saratoga conference of American alienists placed *monomania* also in brackets, under their 3rd general subdivision of heads or types, viz: "Primary delusional insanity (monomania)." And while it is here, as in England "relegated to brackets," as Dr. Walter Channing aptly states, it is misleading as thus used in the American classification, and not quite understandable to lay writers or judicial minds, even though physicians should all concur with the eminent men who thus limited it, to primary delusional insanity, without apparently restricting it to one delusion, or even to one class of delusions. It is clear from a statement made by Dr. Walter Channing in his paper on international classification of mental diseases, that it was the intention of the American alienists, to make their 3rd division synonymous with the Primare Verruecktheit of the Germans, showing

that the bent of the American medical mind, was to give at least in some degree, to the word "monomania" a special signification, not warranted by its deriviation, by the lexicographers, and for which it lacked all the requisites of nomenclature, now recognized as necessary to a correct or available definition.

Dr. Theodore H. Kellogg, an American alienist of experience and a high authority, in an exhaustive essay on insanity over his name in the Reference Hand Book of the Medical Sciences, best illustrates the influence of German ideas, and teachings in his classification, not intended like these to which we have referred, as a basis for international statistics regarding the insane, but as a more complete and exact scientific classification, from the author's standpoint, which should embrace, as Theodore Meynert says, "All the possible learning of its day, and that none should stand that goes beyond that." Dr. Kellogg, a pupil of Meynert, looks at these questions through German spectacles. His classification is divided into two groups: A. (Somato-etiological), and B. (Psychosymptomalological). In his 1st group he has six classes, the 2nd of which is denominated as "Emerging from constitutional neuropathic states, usually hereditary though occasionally acquired." This class he divides into four orders, viz:

1. Instinctive insanity of childhood.
2. Primary monomania.
3. Moral insanity.
4. Periodical insanity.

In his group B, he has only three classes: 1, that of feeling; 2, of intellect, and 3, of will. He divides his first class of group B into two orders; the first, states of depression, and second, of exaltation. This first order (states of depression) he subdivides again into Genera

primary and Genera secondary, in the sixth subdivision of which he places "secondary monomania with depression, and in his second order (states of exaltation), in the second genera, he places in his fifth subdivision "secondary monomania with exaltation."

We have, then, from Dr. Kellogg primary monomania as a disease in his somato-etiological group, and secondary monomania, being of psycho-symptological form, and distinguished by depression on the one hand, and exaltation on the other. No one can for a moment contend that Dr. Kellogg uses the term in the restricted sense of the lexicographers. All jurists and lawyers would be in doubt, as would some medical men, as to what he does mean, by his use of these terms, if they had before them, only the classification itself. Dr. Kellogg says, however, in explanation: primary monomania (order 2) includes all those forms of fixed and limited delusions "that are the morbid result and expression of a constitutional neuropathic condition." And he fully describes his use of the term and of the secondary monomania, as he uses them (which have very little to do with the term as generally understood by legal or lay writers), and admirably and ably gives, that extended use of the term, that the abler writers of the German school have adopted. as a sort of growth, about which there is so much confusion among medical writers and which is *terra incognita* to laymen and jurists. It has come to be used in a very broad way by some writers who have not as completely defined what they do mean, as has Dr. Kellogg, but whose definitions are quite unknown, to the general reader. Dr. Kellogg gives the ablest and most complete classification, recently contributed to the profession, from a scientific standpoint, but not at all fit for a practical use, as a basis of

international statistics of the insane, and it is marred by the use of those terms, the signification of which, would not be correctly understood, by the average or general reader at all.

Thomas Medical Dictionary, a medical work, thus defines "monomania" (from the Greek *μονος*, single, only, one; and *μανια*, madness): a kind of insanity in which the patient is irrational on one subject only, on all others clear and correct. This term has been employed by various writers to denote different kinds of insanity, but authors now generally agree in using it to indicate a partial insanity, in which the patient can converse and act rationally to some extent. The term is falling into disuse on account of its vagueness. Among physicians who advocate the rejection of the term monomania, we may mention several. Pliny Earls says in his letter to Clark Bell, Esq., of April 15, 1885 (Medico-Legal Journal, vol. 3, p. 464): "I would reject the term monomania chiefly, because, 1st, I have never seen a case in which the delusion was confined strictly to one subject, although I have seen many in which it was limited to a class of subjects, or to one central subject, and all or many other subjects related to or connected with it; and 2d, because it has been extensively used in this country, as a cover for cases not only of delirium tremens and alcoholism, but in a multitude of instances of simple habitual inebriety."

Dr. Walter Channing, the able Secretary of the Saratoga Conference, in writing of its action regarding monomania, says: "Our form 3 of 'primary delusional insanity' was the only term coined for our arrangements, and is naturally the one most open to criticism. We desired to do away with 'monomania,' an expression which has slowly lost its significance, until it is now rele-

gated to brackets, and will soon be lost in oblivion" (American Journal of Insanity, January, 1888, p. 378).

Dr. Henry P. Stearns, the Vice-President of the Saratoga Conference, in an able paper on "Classification of Mental Diseases," says upon this subject: A few words in reference to the use of the term 'monomania.' Esquirol introduced this term, to designate a species, rather than a genus, of mental disease. It would appear that at first he thought, there was a special form *i. e.*, insert the clause pp. 354, 355, 356 in brackets, American Journal of Insanity.

Dr. Allen McLane Hamilton says in his recent work: "The term 'monomania' is an impractical refinement."

Dr. Ralph L. Parsons, an alienist of large and extensive experience, in an able paper upon "monomania," claims that this term, as used by Esquirol, was misleading, and its selection unfortunate for the purpose for which it was designed or intended to be used, by Esquirol himself, while the term as now used by medical men, does not even mean what Esquirol intended, illustrating that the monomaniac, as understood to-day, is often depressed in mind and hindered in his mental operations, the opposite of the "gay, rash, petulant, audacious," talkative, blustering, pertinacious and easily irritable type, described by him, and is not necessarily found in the course of the disease to be "of more acute duration shorter and termination more favorable," as defined by Esquirol. Dr. Parsons says in his paper "Nomenclature in Psychiaty, Journal of Nervous and Mental Diseases, vol. xlv., No. 4." "The objections to the term 'monomania' are such that many physicians engaged in the care of the insane do not use the term at all." And in his classification of mental diseases he omits entirely the term "monomania" altogether in a

very elaborate and able classification, as misleading and improper to be used. In the former paper, after reviewing an author who had undertaken a defence of the term, which he characterized more as an apology than a defence, and a general consideration of the views of various writers on the subject, Dr. Parsons remarks:

"The objection to the term, however, does not lie in the fact that its literal meaning, and the signification attached to it, by learned writers on the subject, fail to correspond, but in the fact that its literal meaning is so well defined and so easily understood, that it involves within itself, an idea at variance with its real scientific meaning; and hence that its literal meaning is understood, instead of the real one, by most persons who see or hear the term." He also remarks in the same connection:

"The misleading of the term is liable to be of especial disadvantage, in courts of justice where the correct definitions of the learned counsel and of expert witnesses on one side, may fail to enlighten the intelligent jury in opposition to the interpretations of counsel on the other, aided by the evident implicit meaning of the term."

From what has been said, it is quite apparent that the term, monomania, should now be dropped from the nomenclature of mental diseases. It is not enough that Griesenger, Sankey, Ray, Earl, Tuke, Stearns, Parsons, Channing and a great array of names, should so advise. It should be made the subject of some general authoritative action, which would arrest the attention and exercise a controlling influence, upon the scientific world. As a summary of the views, of so many of our abler minds and the situation, it may be said to-day, that the use of the term should by general and universal consent, be abandoned as misleading and unreliable.

This paper has been prepared to call the attention of the Medico-Legal Society, and of the American Association of Medical Superintendents of Insane Asylums, to the subject. The former has in its membership at the present moment a large number of superintendents of asylums in America, and in its corresponding and honorary list a very large number of the leading alienists of the world. If this proposition should receive the favorable consideration of a carefully selected committee chosen from the ablest alienists of that body, and should receive the endorsement of your association, it might be followed by similar action in the British Medico-Psychological Association, in the Society Medico Psychologique of Paris, the Societies of Psychiatry of Germany, Italy, Russia, Holland, Belgium, and other countries, and "monomania" be hereafter studied historically, as a curious illustration of how the same word meant an entirely different mental state or condition in one country, era, or profession, from that which its derivation signified, and from the meaning universally given it by the lexicographers and the legal profession.

*ABORTION.**

By a Member of the Medico-Legal Society.

Motto,—"All's not offence that indiscretion finds and dotage terms so."
—*Shakspeare.*

DEFINITION.

Webster defines Abortion (n.) (Latin, *abortio*, a miscarriage; usually deduced from *ab* and *orior*).

1. The act of miscarrying or producing young before the natural time, or before the fetus is perfectly formed.

2. The fetus brought forth, before it is perfectly formed.

3. In a figurative sense, any fruit or produce, that does not come to maturity, or anything which fails in its progress before it is matured or perfect, as a design or project.

Abortive in medicine, procuring abortion, as abortive medicine.

Worcester definition is abortion (n.) (and *abortio*).

1. The act of bringing forth what is yet imperfect; premature delivery; miscarriage.

2. The product of an untimely birth.

3. A failure in any enterprise.

Abortive (n. 1), that which is born before the due time; an abortion.

2. (Medical.) Something supposed to produce abortion.

Abortive (a), (1. *abortivous*).

1. Brought forth before due time; immature; untimely; failing.

2. Pertaining to abortion. "Abortive remedies."

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* Read before the International Medico-Legal Congress, June 7, 1889, and the Medico-Legal Society, September, 1889.

Thomas Medical Dictionary defines abortion (Lat. *abortionis*, from *abortior*, *abortus*, to "miscarry."

The morbid expulsion of an immature fœtus, a miscarriage, and the same authority defines abortive (Latin, *abortionis*, from *aborior*, *abortus*, to miscarry), causing abortion Sometimes applied to treatment adopted for preventing further or complete development of disease.

Quain's Medical Dictionary, under head of "Abortion," says: "The act of abortion signifies the expulson of the contents of the pregnant uterus, before the seventh month of gestation."

An abortion is a designation given to a *fœtus* prematurely expelled.

Abortion is defined by Storer as "the violent and premature expulsion of the product of conception, independent of its age, visibility, and normal function."

This definition is intended to apply to criminal abortion, and to relate exclusively to cases where the attempt at premature expulsion of the uterus is artificially and intentionally induced, and when it is not necessitated, and would not otherwise have occurred, and excluding.

1. When it is the result of accident.

2. From natural causes, or

3. Justified by the rules of medicine, to save the mother or the child. (Storer on Criminal Abortions.)

Miscarriage (n.), according to Webster, in the medical sense, is the act of bringing forth before the time, but so late that the young are capable of surviving.

Miscarry (v. i.), in the same sense, by the same authority, is: "To bring forth young before the proper time, but still at so late a period as to be incapable of surviving."

Worcester thus defines miscarriage (n.) in the medical

sense: The act of bringing forth young before the due time. Abortions (Dungleson): "The expulsion of the fœtus from the uterus within six weeks after conception is usually called miscarriage; if it occurs between six weeks and six months, it is called abortion, and if during any part of the last three months, before the completion of the natural term, premature labor" (Hoblyn); and he also defines miscarry (v. n.) in the same sense: "To bring forth young before the due time, to have an abortion."

Quain's Dictionary of Medicine, in an article under head of "Miscarriage" (Dr. ALEXANDER R. SIMPSON), defines it thus:

"Miscarriage is the interruption of gestation, before the *fœtus* has become viable." And the same author uses the word in its medical sense as synoymus with "Abortion" (F. V.) *Avortement; Fausu Conchi;* Ger., *Fehlgeburt.*

Fœticide, criminal abortion, is thus defined by Worcester (L. Fœtus, a *fœtus*, and *cædo*, to kill) (Law), the crime of producing abortion (Bouvier). He defines the Fœtus (Med.) as "The child in the womb after it is perfectly formed, called, in the earlier stages of gestation, the embryo.

Webster defines Fetus (I.) (fetus): The young of viviparous animals in the womb, and of oviparous animals in the egg, after it is perfectly formed, before which time it is called the embryo.

A young animal, then, is called a *fetus* from the time its parts are distinctly formed till its birth.

Thomas' Med. Dict. defines fœticide (Lat. *fœticidium*, from *fœtus* and *cædo*, to kill). The murder of the fœtus in *utero*, criminal abortion.

And fœtus is thus defined (fœtus or fetus): "The

child in *utero* from the fifth month of pregnancy till birth."

Dungleson thus defines :

Fœtus, gen. fœtus, fetus, cyema, onus ventris sarcina. The young of any creation, the unborn child (F.) *fetus fair*, fruit. By *κνημα* Cyema Hypocrates meant the fecundated but still imperfect germ. It corresponds with the term embryo as now used, while *εμβρον embryo* signified the fœtus at a more advanced stage of utero gestation.

The majority of anatomists apply to the germ, the name *Embryo*, which it retains until the third month of gestation, and with some until the period of quickening, while *Fœtus* is applied to it in its later stages. The terms are, however, often used indiscriminately.

When the ovule has been fecundated in the ovarium it proceeds slowly towards and enters the uterus, with which it becomes ultimately connected by means of the placenta.

When first seen, the fœtus has the form of a gelatinous flake, which some have compared to an ant, a grain of barley, a worm curved upon itself, &c.

The fœtal increment is very rapid in the first, third, fourth and sixth months of its formation, and at the end of nine months it has attained its full dimensions (Enfante a terme). Generally there is but one fœtus in utero, sometimes two, rarely three.

The fœtus presents considerable difference in its shape, weight, length, situation in the womb, proportion of its various parts to each other, arrangement and texture of its organs, state of its functions at different periods of gestation, &c. All these differences are important in an obstetrical and medico-legal point of view.

Alfred Swayne Taylor, in his work on Medical Jurisprudence, thus defines abortion in its medical sense :

"By abortion, is commonly understood in medicine, the expulsion of the contents of the uterus before the sixth month of gestation. If the expulsion takes place between the sixth and ninth month, the woman is said to have a premature labor."

The law makes no distinction of this kind, but the term abortion is applied to the expulsion of the fœtus, at any period of pregnancy before the term of gestation is completed ; and in this sense it is synonymous with the popular term "Miscarriage."

Dungleson thus defines it in its medical sense :

"Abortion, abortus, aborsus, aborsio, dystocia, abortiva, omotocia, paracyesis, abortus, ambloses, ablome, amblosums, ecbole, embryotocia, diapthora, ectrosis, examblo:na, examblosis ectrosmus, appopalsis, apopthora, pthora, convulsio uteri, deperdilio, (f) avortment, blessure, miscarriage, (from *ab* and *oriri ortum*, "to rise," applied to that which has arisen out of season.)

The expulsion of the fœtus before the seventh month of utero gestation, or before it is viable.

The causes are referable either to the mother, and particularly to the uterus, or to the fœtus and its dependencies.

The causes in the mother may be : Extreme nervous susceptibility, great debility, plethora, faulty conformation, &c., and it is frequently induced immediately by intense mental emotion, violent exercise, &c.

The causes seated in the fœtus are its death, rupture of the membranes, &c. It most frequently occurs between the eighth and twelfth weeks of gestation.

The symptoms of abortion are : Uterine hemorrhage, with or without flakes of decidua, with intermitting pain.

When abortion has once taken place, it is extremely apt to recur in subsequent pregnancies about the same period.

Some writers have called abortion, when it occurs prior to three months, effluxion. The treatment must vary according to the constitution of the patient, and the causes giving rise to it. In all cases the horizontal posture and perfect quietude are indispensable.

Abortion is likewise applied to the product of an untimely birth, abortus, aborsus, apoblema, apobole, ecbloma, amblothridion, ectroma, fructus fœticide, faticidium, (fœtus and caedere "to kill")—*aborticidium*.

Criminal abortion.

Abortive (f) abortif.

A medicine to which is attributed the property of causing abortion.

There is probably no direct agent of the kind. (See ectrotic.)

ARGUMENT.

Abortion being nowhere forbidden in the Bible, cannot strictly be called an offence against the divine law.

It is not forbidden in the Koran and has been always practiced among Mahomedans.

While not forbidden by the law of Moses, it must be conceded that it was not practiced by the Jews. This we may regard as established:

a. By the fact that the increase of population established beyond doubt its non-existence as a practice among that people.

2. It was not punished as a crime by the law of Moses.

The higher earlier authorities show that the practice of destroying the fœtus in utero, obtained universally among all the earlier nations of the world, with perhaps the single exception of the Jews. (Storer on Abortion, 31. Beck Med. Jurisprudence, Vol. 2, p. 389.)

Making abortion a crime has always been the result of statutory enactments or municipal regulations.

It is impossible to give a date for the beginning of the time when abortion was made a crime in England by law.

The Common Law, which is founded on traditions whereof the memory of man runneth not to the contrary, makes it a crime with severe punishments.

Fleta, almost the oldest authority (A. D. 1290), says:

"10. Cui etiam mulierem proegnantem oppresserit, vel venen um dederit vel percusserit ut facial abortivum-vel non concipiat, si fœtus erat jam formatus et animatus rectè homicida est.

"11. Et similiter qui dederit vel acceperit venenum sub hac intentione ne fiat generatio vel conceptio.

"12. Item facit homicidium mulier quoe puerum animatum per potationem et hujus modi in ventre devastaverit."

In English-speaking countries, it has, from earliest written records, been classified as a crime, but has been substantially a dead letter upon the statute books, and rarely enforced.

This has been due, doubtless, to the fact (unpleasant and unpalatable as it may sound, to state it) that it was against the common and almost universal sentiment of womankind; she who was the greatest sufferer and victim of the social conditions, under which its practice became necessary and inevitable; she who dreaded more the consequences as affecting her social condition than she feared legal penalties, never in her heart respected the law nor held it binding on her conscience. In considering the subject from the maternal standpoint, we should have the courage and the honesty to

look the issue squarely in the face. And, first in marriage:

Has a woman the right to determine the question whether she will take upon herself the pangs and responsibilities and duties of maternity?

Has she any rights at all, upon this question, peculiar to her individuality or sex, or does she, by nature or instinct, or under the law, by marriage place herself in the same relation to her husband, that he has over his flocks, his herds or his horses?

Is it the right of the husband, by the moral law, the Divine law, or by statute law, to dominate the wife, and compel her to bear children, as he would the animal he owned, irrespective of her wish or will, and even over her protest.

If he has not the right to enforce his wishes over hers, what are her rights in the premises, or has she any at all? May she decide for herself, whether or not she will bear children?

It does not need any argument to establish a fact well known to every careful student of political economy, to every medical man, in general practice, that the educated, refined, cultured women of this country, in married life, have, by a very large majority, decided these questions in their own favor, and have set at nought and at defiance the statute laws upon this subject, as binding on neither their consciences nor their actions.

Gail Hamilton, in "Woman's Wrongs, a counter irritant," a reply to Rev. John Todd's "Woman's Rights, a plea for a holier living," voices the inner sentiments of the better classes of her educated and cultured countrywomen in the fearless and forcible manner in which she presents her views on this subject.

The extent of the enforced restriction of the popula-

tion thus forced on womankind, is easily demonstrable, and the evidence is quite conclusive. The best tests are :

1. The comparative increase of the population.
2. The published record of still-births.
3. The number of arrests or trial for abortion.
4. The comparative size of families in present and past times, and,
5. The knowledge and experience of physicians and others who are in a position to know facts regarding it, but not accessible to the general public.

A careful writer who made this subject a study twenty years ago, says, in comparing various countries, that the "fecundity of European countries had diminished in the preceding century as follows :

"In Sweden, one-fifth ; in Prussia one-fourth ; in Denmark, one-third ; in England, one-third ; in Russia, one-half ; in Spain, one-half ; in Germany, one-half ; in France, one-half.

(Storer Abortions, p. 19, and authorities there cited.)

His views are corroborated by Rau (Lerbuch der Politschau ackonomie) Quetelet's tables, though for different years corroborates the views of Storer. (Sur la homme et la developent de ses faculties. Tome 1, Chap. 7.)

Legoyt. In May 1847 in Journal des economistes published tables to the close of 1846, which showed corroborative results of these views.

A careful examination of the recognized authorities at the period at which Dr. Storer wrote, would entirely justify the conclusions at which he arrived, viz : That

1st. The increase of still and premature births in the ratio of the total increase of births had greatly increased and 2d. That the only rational explanation was that this increase was in a great measure due to abortions.

The statistics of New York gave still stronger evidence in regard to the public sentiment of that city twenty years ago.

The registry of New York commenced in 1805 with a population of 76,170, when the number of still and premature births was 47. In 1849, with a population estimated at 450,000, the number had increased to 1,320, as was shown by the report of the City Inspector for that year.

The table showing that ratio from 1805 to 1849 as given by Dr. Storer, was as follows:

RATIO OF FŒTAL DEATHS TO THE POPULATION:

1805	1 to	1.633 40	1830	1 to	597 60
1810	"	1.025 24	1835	"	569 88
1815	"	986 46	1840	"	516 62
1820	"	654 52	1845	"	384 68
1824	"	680 68	1849	"	340 09

Startling as these figures then were, the fact must not be lost sight of that they do not include those cases of abortion which were not reported, and which were known only to the unfortunate mothers and those who aided them.

The report of the city Inspector for 1856 showed that out of 17,755 births, 16,199 were living, proving that one in every 11.4 was born dead.

Let us continue this table from the year 1856 to the present date.

John T. Nagle, M. D, of the Bureau of Vital Statistics, furnishes the writer of this article with the following table and letter in response to an inquiry for light upon this subject for the city of New York:

HEALTH DEPARTMENT OF THE
CITY OF NEW YORK.
SANITARY BUREAU, 301 MOTT St.

NEW YORK, March 17, 1888.

DEAR SIR:—I send you a table of the births and still births and population for the years you desire. The fœtal age of the still born children I can

nly give since the year 1866, but as you will perceive that the birth returns are very meagre I do not think the information will be of much value for givi g an accurate proportion by years. If you think they will be of any use to you, please let me know and I will do the best I can.

Very truly yours, &c.,

JOHN T. NAGLE.

YEAR.	POPULATION.	BIRTHS.	STILL-BIRTHS.	
1860	805.651	12.454	1.638	
1865.....	871.340	5.332	?	
1870.....	942.292	14.524	2.254	475
1875.....1	041.886	23.813	2.274	549
1880.....1	.206.299	27 536	2.362	
1885..... *1	.397.395	30.030	2.968	
1887.....*1	.481.920	34.023	3.100	

* Estimated population.

The same high authority furnished still further information as to still births in New York City.

HEALTH DEPARTMENT,
SANITARY BUREAU, 301 Mott St.
NEW YORK, April 3, 1888.

DEAR SIR:—I inclose a table of still births from 1870 to the year ending Dec. 31, 1887, which is the best I could do for you. I was unable to give you a satisfactory table of the fœtal age of infants prior to this date.

Very truly yours,

JOHN T. NAGLE, M. D.

These statistics show conclusively how universal the practice of abortion must have been in New York, and if similar statistics could be obtained, we should probably show a still greater percentage in the New England States.

As to the number of arrests and trials for this offence, the writer, by the advice of the present District Attorney, Col. John R. Fellows, who has had a long experience, consulted the veteran and intelligent Clerk of the Court of General Session of the City of New York, in response to the following letter:

NEW YORK, March 12th, 1889.

HON. J. A. SPARKS,
Clerk of Court of General Sessions:

MY DEAR SIR:—I will esteem it a great favor if you will furnish me, as soon as you can, with a statement showing the number of arrests, trials and

convictions in this city, of the mother for abortion, and of other than the mother for the procuring of abortion, during the past ten years, or fifteen, if accessible.

If, at the same time, a statement could be made in regard to the crime of infanticide, I should be very glad, but the former I need most Infanticide where the mother was arrested. Trials and convictions, as well as others as accessories either before or after the fact.

I am referred to you for this information by our mutual friend District Attorney Fellows.

Very faithfully yours,

COURT OE GENERAL SESSIONS OF THE PEACE.

CLERK'S OFFICE.

NEW YORK, March 17th, 1888.

DEAR SIR:—Yours of 10th instant (enclosing note of the District Attorney) was duly received, making inquiries as to the number of cases for abortion for fifteen years past. Upon examing the records of said Court. I find that during that period, ten persons were convicted and one person acquitted on indictments for said offense.

The other inquiries you make I have no means of informing you.

Yours truly,

J. A. SPARKS,

Clerk of Court.

We may safely say that the result of the enforcement of the laws for the past fifteen years has not brought to light as many as one case a year, and that the existing statutes are substantially a dead letter, and do not at all meet the exigencies. The laws are in violation of the universal sentiment of woman, though no one has, apparently, dared to say so, and all that is said has been said by man in support of existing statutes; and so far as action has been taken, it is all in the line of increasing the severity of the laws, and adding to the penalties, without the slightest perceptible or probable effect upon women, either in preventing the practice, or diminishing its frequency in the slightest degree.

As to the compartive size of families of to-day, and of even the past generation, in what are called our better classes, taking the educated, cultured, wealthy and

highly respected, we may say that the size of families in New York and New England, show a marked decrease within the past thirty or forty years.

It does not need statistics to prove what every intelligent person of our period knows and recognizes at a glance.

The experience of physicians it is impossible to quote as a matter of public record for two reasons:

1. A physician is precluded by his professional obligations from telling what he knows to be the truth, as to this matter, in detail to the general public.

3. He, if a party to the abortion, is, of course, bound in regard to his own safety, not to reveal it, aside from his professional obligation to his patient. It is not possible that this general practice has gone on without the aid of physicians, not to say their knowledge, and it is quite safe to allege, what every person of intelligence knows, that there is probably no physician of experience in New York or New England, who does not know, by reason of facts coming within his professional observation, of the existence of or the causes that are shown by these vital statistics, of the universal prevalence of abortion among the better classes of married women.

Another class of persons who know, but who cannot testify are the husbands and heads of families, who largely know of the occurrences, in which they are either willing or unwilling actors and participants, but who cannot speak for fear of the consequences of the law, and of the exposure and scandal which is more considered and dreaded than the law, which is not enforced.

The question for us to consider is, what is the duty of the citizen in the matter?

Writers, of which Dr. Storer, in his work, is an example, have very generally denounced the practic as a

horrible and detestable crime. The medical profesions, as such, in all public or private utterances, with singular unanimity, condemn it, and none more loudly than those who, as family physicians, have been many times compelled, by the exigencies of their own practice, to aid the unfortunate in others, who have attempted it, or had partially succeeded in doing so, before their family physician was called in.

The question is worthy the consideration of the body I address.

1. What are woman's rights in this matter?

2. Why keep laws on our statute books which are against the public sense of womankind, and

3. Why not have the courage to meet the issue fairly, and abolish all our laws upon the subject, as did the laws of Moses. and leave the question to the moral sense and training of our women, as the Jews were left, remembering that where there was no law, there was no transgression. And this was the country and the race, who did not practice it at all; and in our own country, where the most stringent and almost cruel laws are enacted, it is almost universally practiced.

ABORTION IN ITS CRIMINAL ASPECTS FOR THE UNMARRIED.

We have considered this offense by the married woman, who, so far as our knowledge and experience go, has hitherto escaped, and has never yet been punished for its commission.

Probably seventy-five or ninety per cent. of the abortions of our civilization, are committed by the married women of the nation.

Who has ever yet heard of a married woman being convicted of this offence, in the whole catalogue of convictions, small as they are? Nor do we regard this as

peculiar to the women of America. It is a question of cultured womankind everywhere, and it is the ignorant, not the refined, the cultured and the educated, who do not, as a rule, practice it.

What shall we say of the unmarried woman of previous good character, who has presented to her the terrible alternative of maternity out of wedlock (regarded and punished by our civilization, by a social degradation ten-fold worse than death), and the destruction of fœtus in utero in violation of law?

Let us have no shams, no falsehoods towards ourselves, no cant, no hypocrisy.

Is there one lawyer with human blood in his veins, who would condemn the fair young daughter of his best friend, for the salvation of her honor by this means, if no other alternative presented?

Is there one, who in his own heart, would for a moment hesitate, were it his own daughter, to urge her to choose what the statute calls a crime rather than face the scorn of the world, unceasingly and forever?

Is there one man in the world, who, if he were in her place, and he could not avoid the alternative in any other, would hesitate to do what the woman of self-respect, of brain, of family, and of ambition must needs do, or be irretrievably disgraced?

Is there a physician, who has ever been a father, whose heart would be against such a woman's act to thus save herself from degradation, despair, death?

How many a poor, despairing girl, the victim of treachery and deceit, has thus faced death by the river or poison, and ended by suicide a life she did not know how to save, except by this means, whose modesty and shame have prevented her from seeking that aid from

medical men, which the law now makes it a crime in them to grant?

We do not hesitate to say, that either our civilization should exempt the unmarried woman from degradation or social harm in this terrible emergency, or our statute book should exempt her from the force of the pending statutes, if the shams of our social structure demand their further continuance as laws.

Over the portals of those asylums that shelter and protect the unmarried woman in this dire moment of supreme distress, that conceal her secret, throw the mantle of secrecy and forgetfulness over her fault, and enable her to bear the burdens of maternity without shame, should be written in effaceable letters, "Blessed are the merciful;" for they put back a little of the flood of human misery to the stricken ones, who are without refuge, or hope, and are the suffering victims of despair.

THE MALTHUSIANS.

We do not care to enter into the ethics of the question of the general laws of human réproduction. We need not advance the arguments of the Malthusian philosophers as to the ethics of the controversy, or dwell upon it in its relation to the social economy of the race.

The Hindoos do not hestate to kill children who come too rapidly, flooding the legitimate channels of reproduction, and when these streams overflow their natural banks, or are swollen beyond their usual channels.

The Chinese sailors are forbidden to rescue their fellows who fall overboard at sea, this being in a country so crowded with human beings that there is scarcely standing room for the population; measured by its food-producing capacity. There can be little doubt, that in the present state of our knowledge as to the embryo,

that life in the human being commences at a very early date indeed, and that the arrest of fœtal development involves much the same ethical questions at two weeks as it does later, so far as the suppression or extinction of a human organization is concerned.

What is called quickening in the law is simply such a state of the fœtal growth or life as is capable of a given muscular phenomena at that period.

The human entity is there before as certainly as after quickening, this being only a manifestation of a certain period of foetal activity.

Those who differed from that philanthropic clergyman, Malthus, never attempted successfully to dispute his facts, or question the basis of his argument founded upon probably indisputable natural laws of population, as affecting the structure of human society. The ratio of increase of human population when unchecked, according to this authority, is by arithmetical progression, 1, 2, 4, 8, 16, 32; while the natural increase of food production, under the most favorable conditions, is only that of 1, 2, 3, 4, 5, 6, 7, 8. The limitations thus placed on the increase of population by a higher law than human legislation, regulates itself within these limits to the salvation and good of the race.

We need not follow nor accept his philosophy, as to what are the legitimate or illegitimate checks by which the overcrowding of the race is averted, through entirely natural and constantly recurring outlets, always working in all ages and among all peoples.

We need not, as men of science, avert our eyes from what we all know and recognize, what has ever been, and must needs ever be. Nor should we add to the list of human crimes those methods of prevention, which the history of the race shows, it has been impossible to avoid or to cure.

Has the Medico-Legal Society the courage and the manliness to speak one strong word for woman and womanhood, on such an issue?

Is there a member who does not know what a hollow, shallow, mocking lie underlies the very base of the laws regarding abortion?

Must we all be frauds and shams to the outer world, and uphold a statute that our wives and mothers and daughters do not either respect, keep or intend so to do?

We have a law against profane swearing in our statute books. Is it ever enforced? It is a dead letter.

We have one against what is called blasphemy. Is it enforced? Yes; it was once in our day in the neighboring State of New Jersey, as our gifted Colonel Ingersoll could testify, but the single example in a generation or a decade only shows the more forcibly that this is also a dead letter.

Shall we repeal them? What harm do they do? is the cry, and we do not stir in such cases.

The difference in the case we now consider is, however, that we all go into a sort of public phrenzy when we speak of abortion.

The respectable physician in the social circle calls for a basin of water, and washes his hands with almost holy horror at the very idea of its practice.

The judge on the bench would, doubtless, imitate the Doctor if he ever had the opportunity, with the chief offenders of his own social set when convicted before him, which he never does, and, each knows it is a lie and a sham.

Out upon either the social monstrosity or the statute. Let us take our choice as free untramelled men of science without fear of popular clamor, and let our only fear be that of violence to truth, to right, and to conscience.

MEDICAL EXPERTISM CONSIDERED FROM ITS LEGAL AND MEDICAL STANDPOINTS.

By T. Gold Frost.

From the days of the old English ordeal and wager of battle, down to the age of the modern expert witness, is a great step: for within this period occurred most of the changes and events, which have made the good old common law what it is to-day. Without attempting any sketch of the development of those rules of evidence which are so familiar to the lawyers of this enlightened generation, let us turn immediately to the consideration of that branch of the law of evidence, which relates to what are technically termed "experts." Mr. Bouvier (in Vol. I of his Law Dictionary) has defined the word "experts" as meaning "persons selected by the Court or parties in a cause on account of their knowledge or skill, to examine, estimate and ascertain things, and make a report of their opinion."

The testimony of the expert should further embrace, not only his stated opinion, but also the train of reasoning which has led him to form such an opinion (Greenleaf on evidence, § 440 M.). But it is not with experts in general, but with the "*medical* expert," that we are called upon to deal. The term "medical expert" may be defined as meaning, one who, by reason of knowledge, skill or experience in the science of medicine, is considered by law to be a proper exponent of questions relating thereto. Before entering into a systematic discussion of the subject, it seems fitting to notice briefly the

* Read before the Congress of Medical Jurisprudence, Jan., 1889.

many attacks—some of them most bitter and uncalled-for—which have been made upon the whole system of expert testimony in general, and upon medical expertism in particular, by members of the legal profession, text-book writers and others. Indeed, to the unprofessiona mind, so many and severe have been the criticisms which have been passed upon expert testimony, that it is difficult for them to understand "why a system, which would seem to be regarded as rather pernicious than beneficial, should be even tolerated by the law" (Bell on Expert Testimony, p. 7). Mr. Taylor, in his work on Evidence (Vol. 1., p. 74), says: "Perhaps the testimony which least deserves credit with a jury, is that of skilled witnesses; and the United States Supreme Court, in McCormick vs. Talcott (20 Howard, 402), characterizes them as "reveries" and "as often skillful and effective in producing obscurity and error, as in elucidation of truth." If expert testimony in general has fared badly at the hads of certain members of the legal profession, medical expertism has fared even worse. For example, let us give but a single instance. Judge Davis, of the Supreme Court of Maine, in delivering the opinion in Neal's case (See 1 Red. Wills, 101) said: "If there is any kind of testimony that is not only of no value, but even worse than that, it is, in my judgment, that of medical experts. They may be able to state the diagnosis of a disease more learnedly, but upon the question, whether it had at a given time reached such a stage, that the subject of it was incapable of making a contract, or irresponsible for his act, the opinion of his neighbors, if men of good common sense, would be worth more than that of all the medical experts in the country (See also opinion of Judge Woodruff, in Gay vs. Ins. Co., 9 Blatch., 142). But

notwithstanding all this adverse criticism, the system stands to-day, recognized by the courts both of this country, and of England, and strongly favored by the great body of the profession in both countries. That the system, notwithstanding its manifest faults and imperfections, is well worthy of the favor and support of all persons who earnestly desire to see justice done and truth promoted, in the highest degree possible, in each and every case, will be the object and aim of this paper. To develop the subject systematically and intelligibly, it will first be considered from its legal, and secondly, from its medical stand point.

I. MEDICAL EXPERTISM CONSIDERED FROM A LEGAL STANDPOINT.

The custom of permitting the evidence of medical experts to be introduced in the trial of certain causes, is by no means a new one peculiar to this century; for as far back as the days of the German Emperor Charles V., it was distinctly recognized, and even incorporated into the "Caroline Diet," adopted at Ratisbon in 1532 (Elwell Malp. and Med. Ev., 285). In English law it appears to have been recognized first as a necessary adjunct to the execution of the writ *de lunatico inquirendo*, and since the close of the eighteenth century, the province of the medical expert has greatly widened and enlarged. As a necessary incident to this, there must have been an inceased demand for the services of medical experts, and this brings us to the inquiry as to what is the necessity—the *raison d' être*—of having expert testimony in the trial of various causes at the present day.

The answer to this is very briefly as follows:

The questions of fact which come up daily before our

courts for adjudication, are constantly becoming more technical and intricate as time passes on: as a consequence of this, the assistance of those whose thorough education and training are competent to explain and unravel these difficult questions, have virtually become a matter of necessity. To be more specific, as regards the necessity of having medical expert testimony, the following might be stated: The opinions of medical men are constantly needed during the course of a trial to show the cause of disease or of death, or the consequence of wounds and injuries; also to determine the question of sanity or insanity, to examine the insured, in life insurance policies about which a suit has arisen after death, and many other matters, as to which a knowledge of the laws and practice of medicine is requisite.

Considering now the subject in its strictly legal aspect, let us inquire first as to the *qualifications* of the "*medical expert*," and secondly, as to what must be the *nature* of the subject matter of the inquiry in order that his testimony may be admitted. Generally speaking, his qualifications should be as follows:

First, inasmuch as his ability and skill in the science of medicine is the ground on which his testimony is sought to be introduced, he must establish fully, and in a manner satisfactory to the Court, that he is possessed of special knowledge of this science. It is not necessary, however, that he should have ever actually *practiced* his prosession, or that he should belong to any particular school of medicine (see Greenleaf on Evidence, § 440; 1 Wharton Ev., § 441). It might also be said that, other things being equal, the value of his testimony will depend mainly upon whether his claims to proficiency in his profession are well founded or not.

Again, he ought, in order to merit the title of an expert, be abundantly able to understand, apply and explain the rules and practices of the particular department of his profession, in which his testimony is required. As to the degree of skill which the expert should possess in order to testify, it is impossible to lay down any definite rule; it is always left to the Court to decide as to his competency, and judges, both in this country and in England, have been very liberal in the matter (Del. and Ches. S. T. Co. vs. Starrs, 69 Pa., 36; State vs. Ward, 39 Vt., 255; Taylor on Ev., 63). Indeed, it seems to be sufficient if the expert but possesses the average ability of members of his profession (Hall vs. Costello, 48 N. H., 176; Tuller vs. Kidd, 12 Ala. N. S., 648). Finally, as a broad general proposition, if it can be established that the proposed witness has been educated for or practiced the medical profession during such a reasonable time as would be sufficient for one of common intelligence to become familiar therewith; it will enable him to testify as an expert. In regard to the qualifications of medical experts, when the question of sanity or insanity is made a leading issue, it should be said that they differ somewhat from the qualifications ordinarily required, when medical testimony is introduced. Thus it has been said that "forensic psychological medicine is a specialty, and an expert in this specialty must be skilled in three departments of science. 1st, law, sufficient to determine what is the 'responsibility,' which is to be the object of the contested capacity; 2d, psychology, so as to be able to speak analytically, as to the properties of the human mind; 3d, medicine so far as concerns the treatment of the insane, so as to speak inductively on the same subject. If either of these factors is wanting, a witness cannot be tech-

nically called an expert" (1 Wharton & Stille, Med. Jur., 275).

We now come to our second inquiry as to what must be the *nature* of the subject matter of the inquiry, in order that the testimony of experts, as such, should be received. In answer to this, it may be stated briefly, that whenever this subject matter is of such a character that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without assistance, then the opinion of witnesses possessing the necessary skill is admissable (3 Douglas, 157; Rex vs. Searle, 2 M. & W., 75). As a corollary to this; it might be stated, that expert testimony cannot be introduced when the inquiry concerns a subject matter, the nature of which is not such as to require any peculiar habits or study, in order to be able to testify intelligently about it. Let us now consider somewhat at length the *functions* of an expert, together with the rules which relate expressly to the production of expert testimony. In the first place, it should be remarked, that the true function of the expert witness is not "to substitute opinion for fact, but to offer reasonable and well-grounded opinions as a basis of consideration, where facts themselves are from the nature of the case inapplicable and insufficient (Bell on Expert Testimony, p. 24). In short, the expert simply presents the *data*, the competency and relevancy of which the Court is to judge, and upon which the Court is to declare the law (Whart. & Stille, Med. Jur., § 280). In the case of Gay vs. Union Mutual Life Ins. Co. (9 Blatch., 142), the relative degrees of importance of the expert's testimony is laid down as follows. First. where he states precise and well-settled scentific facts, or necessary conclusions therefrom, in which case his opinion is entitled to great weight; sec-

ond, where he gives only probable inferences from the facts stated, where his opinion is of less importance; and third, where the opinion being speculative and admitting of another opinion consistent with the facts, is entitled to but little weight.

In entering upon a brief survey of the "law of expert testimony," the question which first comes up naturally relates to the mode of securing the attendance of the expert witness at the trial. In his capacity as an expert, he cannot, like other witnesses be subpœnaed to attend the trial, but must receive and is entitled to special fees (Wharton on Evidence, § 380). In regard to the examination of an expert witness, much might be said, but the following leading principles must suffice. He cannot be examined as to matters of common knowledge, and as to whether certain matter, belong to an expert, is a question for the Court to decide (Wharton on Ev., §§ 436, 437). The proper method to adopt in examining an expert witness, is to ask him certain hypothetical questions, based upon such a state of facts as are deemed by counsel to be warranted by the evidence, and if the jury find the assumed state of facts to be proven, the opinions of the expert are then admissible (Opinion of Judge Story, in U. S. vs. McGlue, 1 Curtis, 9).

Experts cannot be asked to give their opinions in any case upon controverted questions of fact (Wharton on Ev. § 32). Another important principle, and one which is very commonly applied, is that experts cannot state their views on matters of moral or legal obligation (Campbell vs. Rickards, 5 B. & A., 846).

Thus, for example, the opinion of certain physicians as to whether a certain member of their profession had honorably done his duty to his medical brethren, was rejected on the ground that the jury was as capable of

forming an opinion in the matter, as the witnesses themselves. Again, expert witnesses may refresh their memory by reference to professional treatises, relating to the subject, in regard to which they are called upon to testify. Such works may be mentioned as a ground for the opinions advanced, but they are not allowed as evidence in the case (Wharton on Ev., § 438, *et seq*).

On account of the broad range of subjects, it is practically impossible to limit the exercise of the expert's functions, to a particular brand of medicine. Thus a physician, not an oculist, has been permitted to testify as to injuries of the eye; physicians, not veterinary surgeons, as to diseases of mules; and other persons, not surgeons of any kind, as to diseases of animals; a physician, not making insanity a specialty, as to whether a person he visits is insane; a witness, not a chemist, as to whether certain stains are apparently blood" (1 Wharton Ev., § 439). Finally, it sometimes happens that the testimony of both experts and non-experts are introduced at the same trial, in support of the same point at issue. In such a case, the distinction between them is, as has been well said, *quantitative*, and not *qualitative* (People vs. Fernandez, 35 N. Y., 49). As has been already noted, the Court has a very large discretion and power given it, in respect both to the *admission* of expert witnesses, and as to the competency of their testimony; but this is not the only power which is given to it, in order to guard against the evils which sometimes are incident to the admission of expert testimony. As was stated by Judge Doe, in State vs. Pike (49 N. H., 399), at common law, "the judge may give the jury his opinion of the weight of any part, or the whole of the evidence, with the limitation, that he is not to give the opinion as imperative upon them, or as infringing upon their province as judges of the facts."

II. MEDICAL EXPERTISM CONSIDERED FROM A MEDICAL STANDPOINT.

On the medical side of this question, there arise many objections to the present crude use of medical testimony, and the methods of evolving it. The widely differing modes of thought that prevail in the two professions—in the one, the decision of cases rests upon the great principles and maxims; while in the other, the minute facts develop a groundwork upon which to build up great truths. The position of the seeker for scientific truth, as contrasted with that of the advocate, acting as a skillful advocate, is one of antagonism. The expectation on the part of counsel, that the medical expert will testify in his favor, is in itself a bar to the procurement of unbiassed opinions. As it is the duty of the learned counsel to protect the interest of his client, so it is the duty of the medical expert to preserve, the secrets of his patients under the closest cross-examination, in so far as it is not antagonistic to the law of the land, and the principles of public policy. The medical expert should ever base his opinions on scientific facts, but should always avoid speculation. To avoid absurdities and glaring untruths, the cross-examination should be most thorough, and the prior history of the patient, concerning whom their testimony is needed, should be well understood. To show the necessity of this, it might be remarked that experts have been placed on the witness-stand to testify "that no sane person commits suicide, and that all suicides are insane; that all men are more or less insane; that certain propensities or faculties can become irresistible by themselves, and when insane, are irresistible; that very bad people, and especially old con-

victs, are insane, and that certain signs which the great body of the profession regard as indifferent, are sure marks of insanity." In short, as Cicero, in his "*De Divinatione*," has said, *Nihil tam absurde dici potest, quod non dictum al aliquo philosophorum* (See 1 Wharton and S. Med. Jur., § 271). The position of a medical man in a case of insanity is a peculiarly difficult one, for here he must bring to bear all his scholastic as well as his experimental knowledge, and then, without prejudice or bias, present them to the Court. Society at large has a deep interest in this matter of proving the sanity or insanity of certain persons, especially when such an issue is pleaded in a criminal trial; and it certainly has a right to demand that the medical expert should testify in such a case, only after the most thorough and exhaustive examination of the case. Were this always faithfully and honestly done, there would be fewer instances of so-called insane criminals, who after a short period of treatment, are dismissed from the institutions, in which they have been placed, as cured. Again, it has sometimes happened that through the evil designing of interested parties, and the connivance, or possibly, ignorance, of expert witnesses, men of perfectly sound minds have been sent to an insane asylum. Experience has shown that even in the most absurd cases, experts (?) may be found to testify as to the insanity of a party. As a matter of course, in some cases, it is really a difficult matter to determine this question, as was but a few years ago so well shown in the trial of Chas G. Guiteau for the murder of President Garfield.

From what has already been said, it will readily be acknowledged that the necessary qualifications of a medical expert are many and not few. To attempt to state

all these qualifications would be but to end in failure. Without, then, attempting any exhaustive statement, the following general prnciiples may be laid down. The medical expert must be ready to produce the latest experimental investigations in the special branch of his profession to which he is called as a witness. His statements of the facts upon which his opinion is based, as well as the course of reasoning which has led him to reach such a conclusion, must be clearly and accurately stated. His knowledge of the anatomical relations, and the physiological laws, should be broad and accurate. The true expert should be fully acquainted with the effect of various medicines upon the human system, should understand thoroughly the ordinary course of disease, should be a good chemist—both theoretically and experimentally—and finally, should have had, in order to add *moral* effect to his testimony, both with the Court and jury, a somewhat extensive and successful practice. In regard to this last remark, it should be said that while the law does not require an expert to have ever practiced his profession, still, it is perfectly evident that the testimony of some great and noted general practitioner or specialist, would weigh far more heavily with a jury, than that of one whose knowledge was purely theoretical, and which had never been put to the severe test of being put in practice. Indeed, cases very often hinge on the question as to which side in a case, has offered the ablest expert testimony.

This closes our consideration of the subject from a medical standpoint; and, in conclusion, a few words will be added in respect to the subject of medical expertism in general. In the first place, it may be well to call attention to the abuses and dangers of expert testimony.

Admitting that it is susceptible of abuse, and open to many dangers, let us ask ourselves the question: Does the law not provide some means whereby this can be entirely avoided, or at least, greatly mitigated? In answer to this inquiry, it may be said, that expert witnesses are liable, just the same as ordinary witnesses, to be prosecuted for perjury, if they testify falsely, even as to their belief (2 Taylor Ev., 1227). But the weak point in the whole matter is, that it is practically impossible to *prove* that the testimony, which they may have given, is not in accordance with their belief. One of the great dangers of medical expert testimony is, that very few lawyers have the requisite knowledge or skill necessary to detect false statements, or to bring out all the facts, by proper and searching questioning of the expert witnesses. Another danger which has been pointed out as incident to the introduction of medical expert testimony, is the attempt which is so often made "to expand and pervert the functions of an expert, from the exposition of scientific and technical rules of practice, to the statement or discussion of questions of moral or municipal law." Again, experts are permitted to testify, who are clearly biased or prejudiced; in such cases, if the right to recover a verdict, or the decision of a case, depends entirely on the opinion of such experts, then their testimony should be thrown out (Schultz vs. U. S., 2 Nult. and Hurts, 380). With this, our consideration of the question of medical expertism must close. What has already been said is sufficient to show that while many evils have, as a matter of course, crept into the system, still the good points are far in excess of the bad ones. And it may be confidently asserted, that the well-established practice "of the expert witness

informing the Court or jury, and the Court and counsel maintaining the proper line of demarcation between the law and the facts," will continue to prevail for many years to come.

SEPARATE HOSPITALS FOR INSANE CONVICTS.

By Clark Bell, Esq.
President of the Medico-Legal Society of New York.

While most alienists and legislators agree that the defenceless insane should not be subjected to contact with those insane who have committed crimes, or with criminals who have become insane while serving sentence, there seems in the smaller states an insurmountable difficulty, in the way of erecting hospitals for the class called "Criminal Insane."

It is an outrage to compel an insane person to associate with convicts, sane or insane, and none feel this more deeply than the insane themselves, not even excepting their immediate friends.

This offence against the insane, by the states or authorities who commit it, is all the more indefensible because of the utter defencelessness of the insane themselves, even to protest against it. They have no organ, and no ear hears their voice.

Among all the most miserable of the human race, even under the most favorable conditions, there are no greater unfortunates than the hopelessly insane.

The Earl of Sheftesbury, after nearly half a century of experiencé with British asylums, public and private, broader and wider than any living man of his day, or of our century, declared his unwillingness to trust even the relatives of the insane, with the poor duty of visiting them in their affliction, and asked the English Parliament to make visitation by relatives compulsory by law.

Neglect, want of proper care and treatment, brutal attendants, want of proper sanitary precautions, cold, insufficient clothing, solitary confinement, imprisonment, restraint in all its forms, are ills which legislators can charge to the account, neglect or misconduct of the officials or superintendents in charge of asylums, their assistants and employees; but forcing the innocent insane to consort with convicts, is a crime of which the state that suffers it is guilty, and for which legislators and not medical superintendents, should be held responsible.

RELIEF BY STATES.

How can this duty, which the State owes to its insane, be best discharged in a small State like Delaware or Rhode Island?

How can the offence and outrage perpetrated by the State, in committing the insane, called "criminal," to the State Asylum for the innocent insane, in States like New Hampshire and other of the lesser States be prevented and avoided?

These are the problems of the hour.

There were in 1880, 350 insane convicts confined in the various hospitals of the insane in the United States.

If it were true in any state that the number of insane called "criminals," was sufficient to warrant the construction of a small separate hospital for them, under a superintendent and assistants, that State would be wholly without excuse in not so doing.

Take the case of New Hampshire, which has only fourteen convicts committed either by order of the court, to the State Asylum, or by the Governor and council, from inmates of prisons, who became insane while serving sentence. It would not, perhaps, justify the erection of a costly building in that state for such a

small number, but a State like New Hampshire, who only contributes $6,000 per annum to the support of the State Asylum for the Insane, might well purchase or lease a small property in which to care for the insane of this class, that would not of course, be attended with very much expense, and at the same time meet the issue in an honorable way.

It would not cost that state or any state more to support in an institution, with proper care, twenty or thirty inmates with one physician, one assistant and three or four attendants, than it would the physician who maintains a private asylum for a much less number, at his own cost, who receives compensation therefor.

There is in our judgment no state that has even five or six of this class of insane, who can honorably justify itself in forcing the insane called "criminal" into the State Asylum with the innocent insane, upon any such a plea as that of the expense of maintaining so small an asylum.

When physicians competent for such a service can be found who will undertake to lease or furnish a suitable house for such a number, for a reasonable compensation, where can any pretense be reasonably or honorably maintained for the continuance of a system defended by none.

Even if there were force in the excuses, commonly presented by those officials responsible for the existing state of things in so many of the American States, there are, it seems to me, several remedies within the reach of legislative action.

1st. By the passage of laws in the states permitting the insane of this class from sister states to be received, by agreement, under such regulations and upon such terms, as would produce the desired result, and allow

the larger states to have these asylums, like New York and Michigan, to receive inmates from such states as had no asylums, at the expense of the state sending them, at a per capita rate.

2d. By two or more of the lesser states either uniting in the erection and maintenance of a suitable hospital for the wants and requirements of the states uniting in the expense, to be borne ratably or equally by each, and the government, management and supervision regulated by a board agreed upon by both, who would select the superintendents and employees.

3d. By one small state providing by treaty or arrangement for the care of its insane of this class, with another state, who either had such an asylum or proposed to erect one, and located so contiguously to each as to make a common use by the two, or more states, convenient to all, and to offer to each all the advantages of a large institution for the so-called "criminal insane."

RELIEF BY THE GENERAL GOVERNMENT.

Broadmoor Asylum, in England, reaches this class for that country, where the evil can be directly reached by the general government.

Cannot our general government reach also a solution of this question?

The government of the United States now maintains a national asylum for the insane in the District of Columbia.

The same authority exists for the construction by the general government, of a suitable asylum for the insane called "criminal" as for the innocent insane.

At the present moment there is confined in the Government Asylum for Insane at Washinton, John Daley, recently committed, who killed at Washington Joseph

C. G. Kennedy. He was committed by the Supreme Court of the District upon the verdict of a jury pronouncing him insane when he committed the homicide.

The District of Columbia is not, perhaps, suitable for such a purpose, as it is smaller than the lesser states, and has less in population than most if not all of the States. If, however, the general government should erect in the district a hospital for insane convicts, it would not only be within its general province and powers, but would be the simple, direct discharge of the same duty and obligation which rests upon the several States, in what the Government owes to the insane of the nation of this class; and the same responsibility rests upon Congress for the District that rests upon the legislatures of the states for their citizens.

If Congress, in establishing this hospital, should provide that insane convicts from any state or territory where no hospital for insane convicts was in existence, might be committed to the National Hospital, either by the courts at the trial, or by the authority of the governors upon such terms as should be just and equitable among the states—if it was felt that such a change should not be maintained at the expense of the general government—the problem might thus be immediately solved.

The case of Daley and similar cases occurring or likely to occur, brings this live question, with its responsibilities, upon our national government.

We hope that it will be met with promptness and that consideration which the importance of the subject demands.

The Government of the United States would doubtless add to the dignity and greatness of the nation by establishing on a scale equal to the establishment at Broad-

moor, England, a hospital for insane convicts, intended to provide for that class throughout the nation, on a plane equal and abreast with the civilization of the age, which would at once remove the existing evil, and erase from our states the stigma now resting upon those who commit their insane from motives of pretended economy to the state hospitals where the innocent insane are confined.